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Third and Enlarged Edition

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EXPLANATORY NOTE FOR FIRST EDITION

This collection of reprints on the Initiative and Referendum has been compiled primarily for the use of high school students who are preparing to debate the subject, but will be found helpful to all others making a study of the question. The most valuable articles on the subject have been collected and reprinted entire or in part, the aim being to furnish the best material on both sides of the question without undue repetition. The book also contains a bibliography of books, pamphlets and magazine articles bearing on the subject. All available references have been examined and included except those which proved, for one reason or another, to be inaccessible. This compilation is also designed to assist the librarian by furnishing, in convenient form, all the information that will ordinarily be called for, and much that the smaller libraries cannot supply in any other form.

September, 1909.

EXPLANATORY NOTE FOR THIRD EDITION

The continued demand for debate material on the Initiative and Referendum has made necessary a new edition of this hand book. Practically all of the material included in the former editions has been retained, and the volume has been brought up to date by the addition of recent references and more reprinted articles. The Introduction has not been revised, but supplementary information regarding the present status of the Initiative and Referendum will be found in the map and table preceding the Introduction, and also in the new reprints at the end of the book. A brief has also been included.

April 1914.

CONTENTS

ADDITIONAL REPRINTS

BRIEF

Resolved, That the Initiative and Referendum should be adopted in the United States.

INTRODUCTION

I. It is frequently asserted that there are many serious evils in our legislative systems.

II. As a remedy for these evils it is frequently recommended that the Initiative and Referendum be adopted.

A. By the Initiative is meant that upon the petition of a certain percentage of the electors a measure must be framed and presented to the people. If a majority vote in favor of this measure, it becomes a law.

B. By the Referendum is meant that, if a number of the electors so petition, a measure passed by the legislature must be submitted to a vote of the people. Unless a majority vote in favor of the measure, it does not go into effect.

III. The Initiative and Referendum are no longer to be classed as experiments.

A. They have been employed successfully in Switzerland for many years.

B. They have been incorporated into the legislative systems of a large number of the states of the United States.

C. They are important features in the commission plan of city government as it has been adopted in many cities of the United States.

AFFIRMATIVE

I. Our existing legislative systems are unsatisfactory.
   A. Our representatives do not, and, under existing conditions, cannot represent their constituents.
      1. Under our present system of representation, minorities suffer at the hands of the majority.
      2. Representatives are ignorant of or indifferent to public needs, and they are often exposed to evil influences.
      3. Party control is clumsy and inefficient.
   B. Legislatures have become the tools of selfish and corrupt interests.
      1. Much legislation is drafted for the special benefit of railroads and large corporations.
      2. It is secured by improper means, such as bribery, lobbying and log-rolling.
   C. Much legislation is carelessly drafted, or is not in harmony with the public welfare.
   D. That people distrust their legislatures is clearly shown.
      1. By attempts to limit the number and duration of legislative sessions.
      2. By constitutional restrictions upon legislative power.

II. This unsatisfactory state of affairs can be remedied by the Initiative and Referendum.
   A. With the Initiative and Referendum all classes of citizens can be represented.
      1. The will of each person can be registered on every important question.
      2. Measures can be voted on independently of candidates.
   B. The power of the political bosses and the corrupt interests will be destroyed.
      1. The whole people cannot be bribed or intimidated.
   C. Better representatives will be chosen and legislation will be improved.
      1. There will be more incentive for better men to act as legislators.

2. Legislators will be more responsive to the desires of their constituents.

D. Only by means of the Initiative and Referendum can we maintain our present representative form of government.

III. There are many other reasons why we should adopt the Initiative and Referendum.

A. They are practicable.

1. They are simple and inexpensive in operation.
2. No extra election machinery is necessary.
3. They will not be needed often. The fact that the Initiative or the Referendum can be brought into action at any time is often sufficient to prevent the enactment of improper legislation.

B. They are in harmony with the development of our political institutions.

1. Our New England town-meeting.
2. The submission of all constitutional questions to the people for ratification.

C. They will help to raise the standard of citizenship.

1. Party strife will be diminished.
2. There will be greater respect for law where public opinion is behind each measure.
3. Citizens will become more intelligent regarding their laws and will display more interest and feel more responsibility for legislation than at present.

IV. The Initiative and Referendum have been successful where they have been adopted.

A. In Switzerland.

1. Legislation has been improved, interest in public affairs has been aroused, and party strife is almost unknown.

B. In the United States.

1. They have been used intelligently.
2. Many good laws have been adopted through the Initiative and Referendum, and many unwise laws have been prevented.

C. The fact that some do not exercise the privilege of voting is no argument against their extension.
   1. The same argument could be advanced against the voting for officers or the submitting of constitutions to popular vote.
   2. Voters are displaying a growing appreciation of the vote.

NEGATIVE

I. There is no necessity for the Initiative and Referendum.
   A. State governments are comparatively free from abuses.
      1. Legislation, as a whole, is in favor of sound government, justice and morality.
      2. The former power of the bosses and the corrupt interests is no longer possible with the present awakening of the people to their responsibilities.
      3. Under no system can the will of each person be made law.
   B. Such evils as remain can be remedied only by increased watchfulness and sense of responsibility on the part of the people.
      1. Without this, the Initiative and Referendum would be of little use.

II. The adoption of the Initiative and Referendum would result in inefficient government.
   A. The legislature would be deprived of responsibility, and the quality of legislation would deteriorate.
   B. It would be difficult to secure good legislation by means of the Initiative and Referendum.
      1. There is no opportunity for deliberation or amendment.
   C. The people cannot legislate efficiently.
      1. They do not have the time to give to the necessary study of the measures proposed.
      2. They are not sufficiently informed to legislate wisely.

3. They would not take the trouble to inform themselves, and many would not vote.

III. The Initiative and Referendum is objectionable for other reasons.

A. Representative government would be destroyed.

1. The distinction between the executive, legislative and judicial functions of government would be lost.

2. The barriers between constitutional and statutory law would be broken down.

3. Constitutional guarantees would be endangered.

B. The Initiative and Referendum would be made the basis for demagogism.

1. They could be used to advantage by a small minority of the voters.

2. They would be used to promote party or class legislation.

C. They would be used often in times of excitement and would result in hasty and ill-advised legislation.

D. They would be expensive and cumbersome, and would result in too many elections.

IV. The Initiative and Referendum have not been successful where they have been tried.

A. The people have not been sufficiently interested to vote in large numbers.

B. Unwise legislation has often been the result.

C. People are too conservative—much progressive legislation has failed to be enacted.

BIBLIOGRAPHY

A star preceding a reference indicates that the entire article or a part of it has been reprinted in this volume.

BIBLIOGRAPHIES

Kansas. University. Bulletin. Vol. XI. No. 10. July, 1910. Debating and Public Discussion. Initiative and Referendum—Bibliography. pp. 32-5.

Kansas University. Bulletin. Vol. XIII. No. 18. September 1, 1912. Announcements of the Kansas High School Debating League, 1912-'13. pp. 31-4. Lawrence, Kansas.

Kansas University. Bulletin. Vol. XIV. No. 17. August 1, 1913. Announcements of the Kansas High School Debating League, 1913-'14. pp. 31-4. Lawrence, Kansas.

Library of Congress. Select List of References on the Initiative, Referendum and Recall. Compiled by H. B. Meyer. 10 2p. pa. Gov't Ptg. Off. 1912.

Municipal Affairs. 5: 60-1. '01. Direct Legislation.

Nichols, Ray Egbert. Intercollegiate Debates. Vol. II. pp. 281-315. Hinds, Noble & Eldredge, New York. 1912.

Arguments and references of the teams of Colgate University.

North Dakota. University. Circular. Extension Series. 11. No. 2. 1910-1911. N. D. High School Debating League, Announcements, 1910-1911. pp. 25-31.

Ohio. State Library. Initiative and Referendum, 1908. Comp. by C. B. Galbreath. pp. 4-9. Gratis.

Ohio. State Library. Initiative and Referendum. 1911. Comp. by C. B. Galbreath. pp. 64-79. Gratis.

Pearson, Paul M. Intercollegiate Debates. pp. 65-90. Hinds, Noble & Eldredge. New York. 1909.

Arguments and references of the two teams representing Ohio Wesleyan University.

Ringwalt, Ralph Curtis. Briefs on Public Questions. pp. 50-2, 55.

Contains a brief, giving a discussion of the main arguments from the affirmative and negative points of view.

Robbins, E. Clyde. High School Debate Book. pp. 121-33. Briefs and References. A. C. McClurg & Co., Chicago. 1912.

Shurter, Edward D., and Taylor, Carl Cleveland. Both Sides of 100 Public Questions Briefly Debated. pp. 242-5. Briefs and References. Hinds, Noble & Eldredge, New York. 1913.

United States. Library of Congress—Division of Bibliography. List of References Relating to the Initiative and Referendum.

Wilmington Institute Free Library. Bulletin. Vol. II. No. 20. pp. 6-8.

Wisconsin Free Library Commission. Initiative and Referendum: State Legislation. Charles H. Talbot. Comparative Legislation Bulletin. No. 21.

Wisconsin University. Initiative and Referendum. Bulletin. Serial No. 224; General Series No. 25. pp. 4-5.

General Works

American Political Science Association Proceedings, 1907, 4: 193-7. Results of the Initiative and Referendum in Oregon. W. S. U'Ren.

American Political Science Association Proceedings, 1907, 4: 198-221. Initiative and Referendum in Oregon. Geo. A Thacher.

This article is published in condensed form in the Independent. 64: 1191-5. My. 28, '08.

*American Year Book. 1913. pp. 69, 75-8. D. Appleton & Co., New York. 1914.

Beard, Charles Austin. American Government and Politics. pp. 460-9, 597-8. The Macmillan Co., New York. 1910.

Beard, Charles A. and Schultz, Birl E. Documents on the Statewide Initiative, Referendum and Recall. The Macmillan Co., New York. 1912.

Bliss, William D. P., ed. Encyclopedia of Social Reform. Articles on Direct Legislation; Referendum.

Borgeaud, Charles. Adoption and Amendment of Constitutions.

Bourne, Jonathan, Jr. Popular vs. Delegated Government.

Speech in the Senate of the United States, May 5, 1910. pp. 4-7. Govt. Ptg. Office, 1910.

Boyle, James. Initiative and Referendum: Its Folly, Fallacies and Failure. A. H. Smythe, Columbus, Ohio. 1912.

Bradford, Gamaliel. Lesson of Popular Government. Vol. I. pp. 82, 90, 448, 460; Vol. II. pp. 35, 189-201, 239, 251, 383, 560-1.

Bryce, James. American Commonwealth. Vol. I. Chap. XXXIX.

Butler, Nicholas Murray. Why Should We Change Our Form of Government? (62d Congress, 2d Session. Senate Doc. 238). 18p. pa.

Cincinnati Conference for Good City Government. Proceedings, 1909. pp. 309-25. Practical Workings of the Initiative and Referendum in Oregon. Joseph N. Teal.

Cincinnati Conference for Good City Government. Proceedings, 1909. pp. 334-53. Referenda in Massachusetts, 1776-1907. Edward M. Hartwell.

Cleveland, Frederick A. Growth of Democracy in the United States. pp. 177-240.

Commons, John Rogers. Proportional Representation. pp. 186-93.

The above paging is for the first edition. The second edition contains chapters on the initiative and referendum.

Commons, John Rogers. Representative Democracy.

Cree, Nathan. Direct Legislation by the People.

Dealey, James Quayle. Our State Constitutions. pp. 6-7, 14, 18, 20, 21, 25, 42, 51, 86-9.

Deploige, Simon. Referendum in Switzerland.

Gettell, Raymond G. Readings in Political Science. pp. 317-22. Ginn & Co., Boston. 1911.

Godkin, Edwin L. Unforeseen Tendencies of Democracy. pp. 96-144.

Representative government has failed to satisfy the expectations of its promoters and "is likely to make way in turn for the more direct action of the people on the most important questions of government."

Goodnow, Frank J. City Government in the United States. pp. 118-21.

Goodnow, Frank J. Municipal Government. pp. 150-5. The Century Co., New York. 1909.

Haggerty, John. How to Treat the Trusts and How to Win in 1904.

Hart, Albert Bushnell. Actual Government. pp. 78-81.

Hyslop, James H. Democracy, a Study of Government. pp. 122-37.

James, Francis B. Abnormal in Law Making.
May be had from W. D. McKinney, Secretary of the Representative Government League, Columbus, Ohio.

Jones, Chester Lloyd. Readings on Parties and Elections in the United States. pp. 335-54. The Macmillan Co., New York. 1912.

Kahn, Julius. Admission of Arizona and New Mexico: Speech in the House of Representatives, May 18, 1911. 24p. pa. Gov't Ptg. Off. 1911.
Same. Congressional Record. 47:1338-47. May 18, 1911.

Lecky, William Edward Hartpole. Democracy and Liberty. Vol. I. pp. 277-94.

Lieb, Hermann. Initiative and Referendum. 75c. Chicago, Ill.

Lloyd, Henry Demarest. Sovereign People; A Study of Swiss Democracy. p. 261.

Lobingier, Charles Sumner. People's Law or Popular Participation in Law-Making. pp. 349-66. The Macmillan Co., New York. 1909.

Lowell, Abbott Lawrence. Governments and Parties in Continental Europe. Vol. II. pp. 238-80, 292-300, 322-32.

McCrackan, William D. Rise of the Swiss Republic. pp. 338-45.

McCrackan, William D. Swiss Solutions of American Problems. Political Science Study Series. Vol. II. No. 3. Concord Cooperative Printing Co., 109 Elm St., New York.

Maine, Henry Sumner. Popular Government. pp. 41, 67, 96.

Meyer, Ernst Christopher. Nominating Systems: Direct Primaries vs. Conventions in the United States. pp. 452-63.

*Michigan Political Science Association Publications. 3: 57-80. Ap. '98. Popular Initiative and Referendum. O. M. Barnes.
Says the initiative would lead to absolute democracy, which would be harmful. Limited is preferable to unlimited power.

Mill, John Stuart. Considerations on Representative Government. Chaps. III-VIII.

Munro, William Bennett. Government of American Cities. pp. 321-50. The Macmillan Co., New York. 1912.

Monro, William B. Initiative, Referendum and Recall. D. Appleton and Co., New York. 1912.

National Municipal League Proceedings of the Atlantic City Conference for Good Government and Twelfth Annual Meeting, 1906. pp. 363-81. Initiative and Referendum. Louis F. Post.

Nichols, Egbert Ray. Intercollegiate Debates. pp 281-315. Hinds, Noble & Eldredge, New York. 1912.
pp. 313-5. Bibliography.

North Dakota. University. Circular. Extension Series. Vol. II. No. 2. 1910-1911. N. D. High School Debating League. Announcements. 1910-1911. 35p.
Contains a brief, a bibliography and the text, (in condensed form) of a number of state constitutional provisions for the Initiative and Referendum.

Oberholtzer, Ellis Paxson. Referendum in America; Together with Some Chapters on the History of the Initiative and Other Phases of Popular Government in the United States.

Ogg, Frederic A. Governments of Europe. pp. 416-21, 430-4. The Macmillan Co., New York. 1913.

Ogg, Frederic A. Social Progress in Contemporary Europe. pp. 200-12. The Macmillan Co., New York. 1912.

Ohio State Bar Association Proceedings, 1907. 28: 145-8. Initiative and Referendum. E. B. Kinkead.
Also published in separate form.

Ohio. State Library. Initiative and Referendum, 1908. Comp. by C. B. Galbreath. Gratis.
Contains a bibliography and "full text of the constitutional provisions of all states that have adopted the initiative and referendum."

Ohio. State Library. Initiative and Referendum. 1911. Comp. by C. B. Galbreath. Gratis.

*O'Neal, Emmet. Representative Government and the Common Law: Study of the Initiative and Referendum. 23p. pa. Chamber of Commerce. New York. 1911.
Same. United States. 62d Congress, 2d Session. Senate Doc. 240.

Oregon. Secretary of State. Pamphlet Containing a Copy of All Measures "Referred to the People by the Legislative Assembly," "Referendum Ordered by Petition of the People" and "Proposed by Initiative Petition." 1908.

Oregon. Pamphlet Containing a Copy of All Measures "Referred to the People by the Legislative Assembly," "Referendum Ordered by Petition of the People," and "Proposed by Initiative Petition," to be Submitted to the Legal Voters of the State of Oregon for Their Approval or Rejection at the Regular General Election to be Held on the 8th Day of November, 1910. 208p. pa. 1910.

May be secured on application to the Secretary of State, Salem, Ore.

Palgrave, R. H. Inglis. Dictionary of Political Economy. Vol. III. Article on Referendum.

Parsons, Frank. City for the People. pp. 255-306, 505-27, 605-29.

Parsons, Frank. Story of New Zealand. pp. 409-17, 766-76.

Parsons, Frank, and Others. Primer of Direct Legislation. 20p. 10c.

Reprinted from the Arena, May, June and July, 1906. May be secured from the Twentieth Century Co., 5 Park St., Boston.

Pearson, Paul M. Intercollegiate Debates: Briefs and Reports. pp. 65-90. Hinds, Noble & Eldridge, New York. 1909.

Contains a short bibliography, also reports of speeches of the debating teams representing Ohio Wesleyan University.

Pittsburgh Conference for Good City Government. Proceedings, 1908. pp. 75-85. Initiative, Referendum and Recall. Discussion by A. Julius Freiburg, Hon. Ben. B. Lindsey, A. Leo. Weil.

Pittsburgh Conference for Good City Government. Proceedings, 1908. pp. 223-46. Initiative, the Referendum and the Recall in American Cities. Robert Treat Paine, Jr.

Describes in detail the Initiative, Referendum and Recall as used in the various cities of the United States and Canada.

Pomeroy, Eltweed. Direct Legislation in 1905. In Strong's Social Progress.

St. Mary's College (Kans.). Bulletin. Vol. VII. No. 2. April, 1911. Harbaugh Debate: Initiative and Referendum. 20p.

Contains the introductory remarks of the chairman, and the arguments of the debaters, both affirmative and negative.

Shuler, Carl F. Address before the Ohio House of Representatives on the Initiative and Referendum.

May be had from W. D. McKinney, Secretary of the Representative Government League, Columbus, Ohio.

Sullivan, J. W. Direct Legislation by the Citizenship through the Initiative and Referendum.

Taft, William Howard. Popular Government: Its Essence, Its Permanence and Its Perils. pp. 42-95. Yale University Press, New Haven. 1913.

Tawney, James A. Proposed Reforms of the So-Called Progressives: Address before the Minnesota Bankers Association, 1911. 16p. pa.

Taylor, Asa. Can or Can't; Politics for the Workingman by a Workingman.

Townsend, Malcolm, comp. Handbook of United States Political History for Readers and Students. p. 255.

United States. 55th Congress, 2d Session. Senate Document 340. Direct Legislation: Papers by Eltweed Pomeroy and others.

"An extensive collection of arguments and digests of literature on the subject of direct legislation."—Galbreath.

United States. 57th Congress, 2d Session. House Document I. pp. 482-94. Referendum and Initiative. Arthur S. Hardy.

A detailed report on direct legislation in Switzerland.

United States. 60th Congress, 1st Session. Senate Document 114. Public Opinion Bill. Henry C. Lodge.

United States. 60th Congress, 1st Session. Senate Document 516. Memorial of Initiative and Referendum League of America Relative to a National Initiative and Referendum.

United States. 60th Congress, 1st Session. Senate Document 521. Memorial of State Referendum League of Maine, concerning Initiative and Referendum.

United States. 60th Congress, 1st Session. Senate Document 529. Supplemental Memorial of Initiative and Referendum League of America Relative to a National Initiative and Referendum.

United States. 61st Congress, 1st Session. Senate Doc. 126. Initiative in Switzerland: Report to the Department of State by the Vice-Consul at Berne, Switzerland. 32p. pa. Supt. of Doc. 1909.

United States. 62d Congress, 2d Session. Senate Doc. 651. Glaring Error in Certain Senate Documents Opposing Popular Government. C: F. Taylor. 8p. pa. Supt. of Doc. 1912.

Vincent, John Martin. Government in Switzerland. pp. 72-4, 84-90, 188-99, 362.

Webb, Sydney and Beatrice. Industrial Democracy.

White, John Z. Direct Legislation: the Initiative and Referendum. pa. 5c.
Reprinted from the Public, January 8, 1908.

Winchester, Boyd. Swiss Republic. pp. 164-74.

Wisconsin. Assembly Journal, 1907. pp. 1443-5. Veto Message. Governor J. O. Davidson.

Wisconsin Free Library Commission. Initiative and Referendum: State Legislation. Margaret A. Schaffner. Comparative Legislation Bulletin. No. 11.

Magazine Articles

General

Academy of Political Science (N. Y.). Proceedings. 3: 203-9. Ja. '13. Initiative and Referendum. Paul S. Reinsch.

American Journal of Politics. 5: 598-607. D. '94. Legislatures: A Defense and a Criticism. Raymond L. Bridgman.

American Magazine. 65: 527-40. Mr. '08. U'Ren, the Law-Giver; Legislative Blacksmith of Oregon and the Tools He Has Fashioned for Democracy. Joseph Lincoln Steffens.

American Political Science Review. 1: 213-47. F. '07. Amendment of State Constitutions. James Wilford Garner.
The use of the referendum in amending constitutions is increasing.

American Political Science Review. 2: 32-42. N. '07. Initiative, the Referendum, and the Recall: Recent Legislation in the United States. Margaret A. Schaffner.

A summary of the initiative and referendum laws and amendments passed in various states, and judicial decisions concerning them.

American Political Science Review. 2: 60-2. N. '07. Notes on Current Legislation; Initiative and Referendum. Ambrose B. Blake.

Discusses the Montana initiative and referendum law, passed in 1905.

American Political Science Review. 5: 245-7. My. '11. Initiative and Referendum in Wyoming and California. S. Gale Lowrie.

American Political Science Review. 5: 394-417. Ag. '11. Working of the State-wide Referendum in Illinois. C. O. Gardner.

American Political Science Review. 5: 434-7. Ag. '11. Initiative and Referendum: California. S. Gale Lowrie.

American Political Science Review. 5: 566-72, 590-2. N. '11. New Forms of the Initiative and Referendum. S. Gale Lowrie.

Annals of the American Academy. 2: 324-44. N. '91. Law-Making by Popular Vote; or, American Referendum. Ellis Paxson Oberholtzer.

The people of many states may now decide on amendments to the constitution, the location of the seat of government, matters relating to the collection and expenditure of the public moneys, and questions on which there are bound to be decided differences of opinion, as prohibition or woman suffrage.

Annals of the American Academy. 38: 823-32. N. '11. Initiative and Referendum in Commission Cities. C. O. Gardner.

*Annals of the American Academy. 43: 81-109. S. '12. Provisions for State-wide Initiative and Referendum. C. B. Galbreath.

Annals of the American Academy. 43: 110-45. S. '12. Initiative, Referendum and Recall in Switzerland. William E. Rappard.

pp.118-21. Bibliography.

Annals of the American Academy. 43: 146-58. S. '12. Referendum and Initiative in Michigan. John A. Fairlie.

Annals of the American Academy. 43: 159-78. S. '12. Maine's Experience with the Initiative and Referendum. J. William Black.

Annals of the American Academy. 43: 179-90. S. '12. Wisconsin Plan for the Initiative and Referendum. S. Gale Lowrie.

Annals of the American Academy. 43: 191-202. S. '12. Initiative and Referendum Amendments in the Proposed Ohio Constitution. R. Crosser.

Annals of the American Academy. 43: 203-15. S. '12. Considerations upon the State-wide Initiative and Referendum. W. F. Dodd.

Arena. See Monthly Numbers Since October, 1907, for Initiative and Referendum News.

*Arena. 24: 47-52. Jl. '00. Referendum in America. Edwin Maxey.

Arena. 28: 464-70. N. '02. Direct Legislation; or, the Initiative, the Referendum, and the Recall. Eltweed Pomeroy.

Arena. 32: 377-91. O. '04. Democracy and Municipal Government; or, How the Richest Town in the World is Ruled by the Referendum. B. O. Flower.

Brookline's (Massachusetts) system of government is an example of direct legislation successfully applied to the government of municipalities.

Arena. 29: 75-6. Ja. '03. Meaning of Direct Legislation. Eltweed Pomeroy.

*Arena. 34: 234-40. S. '05. Direct Popular Legislation: The Chief Objections Examined. Charles Sumner Lobingier.

Arena. 35: 92-6. Ja. '06. Direct Legislation in Cartoon. Eltweed Pomeroy.

Arena. 40: 546-51. D. '08. Victorious Campaign for Direct-Legislation in Maine. Kingsbury B. Piper.

Atlantic Monthly. 94: 728-39. D. '04. Our State Legislatures. Samuel P. Orth.

Describes the actual character of our legislatures as they now exist.

Atlantic Monthly. 109: 143-4. Ja. '12. Initiative, Referendum and Recall: List of the Measures Submitted to the People of Oregon in the Last Four Elections.

Charities and the Commons. 15: 199-200. N. 11, '05. Chicago Referendum Vote. Graham Taylor.

*Chautauquan. 13: 29-34. Ap. '91. Referendum in Switzerland. J. W. Sullivan.

Chautauquan. 36: 354. Ja. '03. Referendum on the Referendum.

Chautauquan. 65: 101-6. D. '11. Latest in Government. A. E. Bestor.

*Congressional Record.

Consult Volume 47 for the debates on H. J. Resolution 14 and S. J. Resolution 57 for arguments for and against the Initiative and Referendum.

Contemporary Review. 57: 489-511. Ap. '90. Ought the Referendum to Be Introduced into England? A. V. Dicey.

This article is also published in the Living Age. 185: 515-28. My. 30, '90.

*Contemporary Review. 67: 328-44. Mr. '95. Referendum in Switzerland. Numa Droz.

This article is also published in the Eclectic Magazine, n.s. 61: 625-36. My. '95; also, Living Age. 205: 3-14. Ap. 6, '95.

Contemporary Review. 72: 242-52. Ag. '97. Referendum in Australia and New Zealand. Lilian Tomn.

Contemporary Review. 99: 139-47. F. '11. Referendum and the Plebiscite. Y. Guyot.

*Edinburgh Review. 171: 135-45. Ja. '90. Democracy in Switzerland.

Eclectic Magazine, n. s. 61: 625-36. My. '95. Referendum in Switzerland. Numa Droz.

This article is also published in the Contemporary Review. 67: 328-44. Mr. '95; also, Living Age. 205: 3-14. Ap. 6, '95.

Equity Series, 1906-1913.

Consult quarterly numbers for the Direct Legislation Record. Published quarterly by C. F. Taylor, 1520 Chestnut St., Philadelphia, Pa.

Harper's Weekly. 55: 9. Ap. 22, '11. Letting the People Speak; Initiative and Referendum in Oregon. Charles M. Snow.

Harper's Weekly. 57: 8. Jl. 4, '13. Initiative and the Referendum. Henry J. Ford.

*Independent. 53: 329-30. F. 7, '01. Referendum.

*Independent. 66: 421-3. F. 25, '09. Initiative and Referendum in Oklahoma. L. J. Abbott.

Independent. 69: 734-41. O. 6, '10. Referendum in Action. Edwin E. Slosson.

Description of a recent Swiss election showing the Referendum in actual operation.

Independent. 69: 1434-8. D. 29, '10. Interesting Election in Oregon. George A. Thacher.

Journal of Social Science. 33: 213-26. N. '95. Referendum and Other Forms of Direct Democracy in Switzerland. E. V. Raynolds.

This article is also published in the Yale Review. 4: 289-304. N. '95.

Literary Digest. 34: 906-7. Je. 8, '07. Initiative and Referendum in Oregon.

Living Age. 185: 515-28. My. 30, '90. Referendum in Switzerland. A. V. Dicey.

This article is also published in the Contemporary Review. 57: 489-511. Ap. '90.

Living Age. 205: 3-14. Ap. 6, '95. Referendum in Switzerland. Numa Droz.

This article is also published in the Contemporary Review. 67: 328-44. Mr. '95; also Eclectic Magazine, n.s. 61: 625-36. My. '95.

McClure's. 37: 234-48. Jl. '11. Initiative and Referendum and How Oregon Got Them. Burton J. Hendrick.

McClure's. 37: 435-50. Ag. '11. Law-Making by the Voters in Oregon. Burton J. Hendrick.

Municipal Affairs. 6: 180-4. Je. '02. Referendum in Party Nominations. Robert H. Whitten.

Nation. 43: 410-12; 494-6. N. 18, '86. Democracy in Switzerland. A. V. Dicey.

He points out the difficulties inherent in an attempt to draw from the Swiss institutions lessons which could be applied to the solution of English or American problems. These are due to the peculiar history and condition of the Swiss people.

Nation. 81: 394. N. 16, '05. Referendum Votes.

Nation. 82: 463. Je. 7, '06. Spread of the Referendum.

Nation. 83: 550-1. D. 27, '06. Unrecognized Referendum.

Nation. 95: 324-5. O. 10, '12. Real Popular Government.

National Review. 23: 65-80. Mr. '94. Referendum. A. V. Dicey; G. N. Curzon; Frederick A. Maxse; Earl Grey; Lord Farrar.

*New England Magazine, n. s. 9: 563-8. Ja. '94. Swiss Referendum. Nathan N. Withington.

*North American Review. 185: 202-13. My. 17, '07. Referendum and Initiative in Switzerland. M. W. Hazeltine.

Outlook. 50: 423-4. S. 15, '94. Letters on the Referendum. Charles B. Spahr.

Outlook. 89: 363-4. Je. 20, '08. Responsible Government.

Outlook. 97: 96-101. Ja. 21, '11. Nationalism and Popular Rule. Theodore Roosevelt.

*Political Quarterly. No. I: 159-61. F. '14. Direct Legislation in the West. O. D. Skelton.

Political Science Quarterly. 22: 484-97. S. '07. Education of Voters. George H. Haynes.

Political Science Quarterly. 26: 32-62. Mr. '11. People's Rule in Oregon, 1910. George H. Haynes.

Political Science Quarterly. 26: 415-31. S. '11. Referendum in Great Britain. Herbert W. Horwill.

Political Science Quarterly. 28: 18-33. Mr. '13. People's Rule on Trial: Oregon Election, November 5, 1912. George H. Haynes.

Political Science Quarterly, 28: 207-29. Je '13. Voting Organic Laws: Action of the Ohio Electorate in the Revision of the State Constitution in 1912. Robert E. Cushman.

Public. 14: 40-2. Ja. 13, '11. Oregon's Democracy in Action. James P. Cadman.

Quarterly Review. 214: 509-20. Ap. '11. Referendum in Operation in Switzerland. William Oechsli.

Quarterly Review. 214: 520-9. Ap. '11. Referendum in Operation in the United States. A. Lawrence Lowell.

Quarterly Review. 214: 529-38. Ap. '11. Referendum in Operation in Australia. William H. Moore and Ernest Scott.

*Spectator. 73: 234-5. Ag. 25, '94. Swiss Referendum and the People's Will.

Spectator. 102: 153-4. Jl. 31, '09. Will of the People.

Twentieth Century Magazine. 4: 114-20. My. '11. How Oregon Stood Pat. George J. King.

Twentieth Century Magazine. 4: 282-4. Je. '11. Progress of the Initiative and Referendum in America. George M. Hammell.

Westminster Review. 175: 129-38. F. '11. Rule by Referendum. Finem Respice.

World To-Day. 21: 1471-80. D. '11. People Who Govern Themselves. Albert J. Beveridge.

World's Work. 22: 14353-9. My. '11. People's Power in Oregon. W. G. Eggleston.

*Yale Review. 4: 289-304. N. '95. Referendum and Other Forms of Direct Democracy in Switzerland. E. V. Raynolds.

This article is also published in the Journal of Social Science. 33: 213-26. N. '95.

Yale Review. 18: 206-9. Ag. '09. Recall. Margaret A. Schaffner.

Affirmative

American Law Review. 28: 683-708. S. '94. American Legislature. Moorfield Story.

American Political Science Review. 1: 446-9. My. '07. Notes on Current Legislation; Initiative and Referendum. Frank W. Lucas.

*Annals of the American Academy. 4: 883-903. My. '94. Reform of Our State Governments. Gamaliel Bradford.

The legislatures have usurped many of the powers of the executive but are unable to use them. The executive should be strengthened and made independent of the legislative body.

*Annals of the American Academy. 6: 361-70. N. '95. Recent Political Experiments in the Swiss Democracy. Louis Wuarin.

Describes the referendum, initiative, proportional representation and the compulsory vote as used in Switzerland, and their results.

Annals of the American Academy. 43: 3-16. S. '12. Functions of the Initiative, Referendum and Recall. Jonathan Bourne, Jr.

Annals of the American Academy. 43: 17-31. S. '12. Initiative, Referendum and Recall. George W. Guthrie.

*Annals of the American Academy. 43: 65-77. S. '12. Direct Legislation and the Recall. Henry J. Ford.

Arena. 2: 503-6. S. '90. Legislative Degeneracy in Massachusetts. Sylvester Baxter.

Arena. 3: 458-64. Mr. '91. Swiss Referendum. William D. McCrackan.

Arena. 7: 548-53. Ap. '93. Initiative in Switzerland. William D. McCrackan.

Arena. 7: 696-701. My. '93. How to Introduce the Initiative and Referendum. William D. McCrackan.

Arena. 16: 29-43. Je. '96. Direct Legislation Movement and Its Leaders. Eltweed Pomeroy.

A good history of the attempts to promote the cause of the referendum.

Arena. 16: 553-7. S. '96. Initiative and Referendum. Charles Walter Bowne.

Its best argument is that direct legislation will do away with parties.

Arena. 17: 707-10. Ap. '97. Problem of Municipal Reform: Contract by Referendum. H. S. Pingree.

Arena. 17: 711-21. Ap. '97. Doorway of Reforms. Eltweed Pomeroy.

Arena. 18: 613-27. N. '97. Initiative and the Referendum. E. F. Barker.

*Arena. 19: 505-19. Ap. '98. Brookline: A Model Town under the Referendum. B. O. Flower.

Arena. 22: 97-100. Jl. '99. Direct Legislation: Now in Operation. A. A. Brown.

Arena. 22: 101-10. Jl. '99. Direct Legislation: Objections Answered. Eltweed Pomeroy.

Answers three objections: 1. Fear of the people. 2. Impracticability of direct legislation. 3. Objection of the anarchist to having any laws.

*Arena. 22: 725-39. D. '99. Direct Legislation in Switzerland and America. John Rogers Commons.

Arena. 25: 317-23. Mr. '01. Direct Legislation and Social Progress. Eltweed Pomeroy.

Arena. 26: 425-30. O. '01. Imperative Need of the Referendum Emphasized by Recent Attempted Legislation. B. O. Flower.

Arena. 27: 533-8. My. '02. Organized Labor and Direct Legislation. B. O. Flower.

Organized labor is in favor of direct legislation.

*Arena. 28: 119-24. Ag. '02. Democratic vs. Aristocratic Government. Eltweed Pomeroy.

Arena. 28: 428-32. O. '02. Preserving Free Government through Majority Rule. B. O. Flower.

A description of the Winnetka, Ill., plan of government.

Arena. 28: 517-23. N. '02. Progress and Probable Future of the Optional Referendum and Initiative. George H. Shibley.

Arena. 29: 173-85. F. '03. Victorious March of the Majority Rule. George H. Shibley.

Arena. 29: 270-5. Mr. '03. Initiative and Referendum in Oregon. W. S. U'Ren.

A history of the movement for direct legislation in Oregon.

Arena. 29: 421-4. Ap. '03. Difference between a Real and a Pseudo Republic.

Arena. 29: 625-37. Je. '03. Progress of the Campaign for Majority Rule. George H. Shibley.

Arena. 30: 96-8. Jl. '03. Back to the Source of Free Government. B. O. Flower.

Arena. 30: 268-72. S. '03. Direct Legislation in New Zealand. H. G. Ell.

Arena. 30: 606-13. D. '03. Failure of Representative Government. Eltweed Pomeroy.

Arena. 30. 613-6. D. '03. Judges Attack Oregon Amendment for Majority Rule. George H. Shibley.

Arena. 31: 153-7. F. '04. Two Arguments against Direct Legislation. Eltweed Pomeroy.

Arena. 31: 284-5. Mr. '04. Majority Rule System Constitutional; Decision by Oregon Supreme Court. George H. Shibley.

Arena. 31: 561-8. Je '04. Direct Legislation in Illinois: A Story of Triumph for Popular Government. Daniel L. Cruice.

Arena. 32: 128-31. Ag. '04. Operation of the Initiative and Referendum in Oregon. W. S. U'Ren.

Quotes the decision of the State Supreme Court in regard to the constitutionality of the Oregon initiative and referendum law.

Arena. 32: 406-8. O. '04. Voters Always Sovereign. Maurice F. Doty.

Arena. 33: 51-2. Ja. '05. Really Masters. Eltweed Pomeroy.

Recall of J. P. Davenport, a Los Angeles councilman.

Arena. 33: 267-9. Mr. '05. Nevada Referendum Victory as an Illustration of Democratic Progress. Eltweed Pomeroy.

Arena. 33: 369-75. Ap. '05. Switzerland and Her Ideal Government; or, Direct-Legislation in the Alpine Republic. O. K. Hewes.

A history of the development of direct legislation in Switzerland.

Arena. 33: 482-6. My. '05. Practical Results Which Have Attended the Introduction of the Referendum in Switzerland. Charles Borgeaud.

Arena. 33: 549-50. My. '05. Referendum Victory in Municipal Government.

Arena. 34: 142-6. Ag. '05. Vast Educational Scheme. Eltweed Pomeroy.

Arena. 34: 462-4. N. '05. Guarded Representative Government—the Vital Demand of Democracy. George H. Shibley.

Arena. 35: 46-8. Ja. '06. Initiative a Democratic Safeguard against Class-Government. Eltweed Pomeroy.

A reply to W. H. Brown. American Journal of Sociology. 10: 713-49. My. '06.

Arena. 35: 146-50. F. '06. Democracy's Call to the Statesmanship of Today. B. O. Flower.

Arena. 35: 271-3. Mr. '06. March of Direct-Legislation. Eltweed Pomeroy.

Arena. 35: 507-11. My. '06. Primer of Direct-Legislation: Referendum. Frank Parsons and others.

Arena. 35: 523-6. My. '06. An American Commonwealth Where the People Really Rule.

Oregon as a concrete example of practical democracy.

Arena. 35: 600-3. Je. '06. Primer of Direct-Legislation: The Initiative. Frank Parsons and others.

Arena. 35: 641-3. Je. '06. Movement for Guarded Representative Government.

Arena. 36: 45-54. Jl. '06. Primer of Direct-Legislation. Eltweed Pomeroy and others.

*Arena. 36: 186-8. Ag. '06. Most Important Political Event of the Year.

Arena. 36: 516-8. N. '06. Present Status of the Referendum Movement in Maine. Abner W. Nichols.

Arena. 37: 627-30. Je. '07. Some Facts about Direct-Legislation through the Initiative and Referendum.

Arena. 38: 71-9. Jl. '07. Honest Objectors Who Distrust Democracy.

Arena. 38: 80-5. Jl. '07. Direct-Legislation in Oregon and the Misrepresentations of the Reactionary Press.

Arena. 38: 288-95. S. '07. Bugaboo of Direct-Legislation: A Calm Review of Objections Urged by the Opposition. Linton Satterthwait.

Arena. 38: 321-3. S. '07. Authoritative Statements as to the Practical Working of Direct-Legislation in Switzerland and America.

Arena. 38: 323-5. S. '07. Misrepresentative Government and How to Make It Representative.

Arena. 38: 515-9. N. '07. Secretary Taft and Secretary Lodge as Upholders of Machine-Rule. George H. Shibley.

*Arena. 39: 131-41. F. '08. Direct Vote System. William D. Mackenzie.

Arena. 39: 449-55. Ap. '08. Appeal to Friends of Popular Government.

Arena. 39: 608-11. My. '08. Direct Legislation and Popular Government.

Arena. 39: 618-9. My. '08. Success of Direct Legislation in Switzerland.

People of Switzerland are absolutely in favor of direct legislation and would not return to their former method of government.

Arena. 39: 643-50. Je. '08. Restoration of Popular Rule: The Greatest of All Non-Partisan Issues. Robert L. Owen.

Arena. 39: 650-61. Je. '08. Direct Legislation Campaign in the Empire State. B. O. Flower.

Arena. 39: 661-5. Je. '08. Proposed Direct-Legislation Constitutional Amendment for New York. Frederic Cyrus Leubuscher.

Arena. 40: 142-50. S. '08. Initiative and Referendum in Practical Operation. George H. Shibley.

The results of Oregon's recent election are favorable to the initiative and referendum.

Arena. 40: 241-2. S. '08. Direct-Legislation in Switzerland.

Arena. 40: 239-41. S. '08. Triumphant Democracy.

Arena. 40: 283-6. O. '08. Lincoln's Ideal Carried Out in Oregon. Robert Treat Paine, Jr.

Arena. 40: 333-4. O. '08. Ideal Government of the Capital of Vermont under Direct Legislation. C. A. G. Jackson.

An example of successful town government.

Arena. 40: 411-4. N. '08. Political Pilgrimage. Carl S. Vrooman.

Arena. 41: 109-10. Ja. '09. Progress of Direct-Legislation in American Municipal Government. Robert Treat Paine, Jr.

Atlantic Monthly. 78: 1-13. Jl. '96. Real Problems of Democracy. E. L. Godkin.

*Atlantic Monthly. 80: 35-53. Jl. '97. Decline of Legislatures. E. L. Godkin.

Atlantic Monthly. 109: 122-31. Ja. '12. Initiative, Referendum and Recall. Jonathan Bourne, Jr.

Canadian Magazine. 1: 445-50. Ag. '93. Referendum and Plebiscite. G. W. Ross.

Charities and the Commons. 17: 973-4. Mr. 2, '07. Assertion of the People's Right to the Referendum. Graham Taylor.

Chautauquan. 62: 148-50. Ap. '11. Referendum and Initiative.

City Club Bulletin (Chicago). 4: 37-42. F. 8, '11. Practical Operation of the Initiative and Referendum. George J. King.

Contemporary Review. 56: 555-73. O. '89. American State Legislatures. Albert Shaw.

Contemporary Review. 92: 504-18. O. '07. Swiss Referendum as an Instrument of Democracy. John A. Hobson.

This article is also published in the Living Age. 225: 451-61. N. 23, '07.

Cosmopolis. 6: 48-62. Ap. '97. Poll of the People. J. St. Loe Strachey.

*Cosmopolitan. 15: 329-33. Jl. '93. Swiss Referendum, the Ideal Republican Government. William D. McCrackan.

Current Literature. 28: 310-1. Je. '00. Referendum. John Roger Commons.

Quoted from the Arena. 22: 725-39. D. '99.

Edinburgh Review. 218: 257-77. O. '13. Problem of Democracy and the Swiss Solution.

*Hampton's. 26: 459-72. Ap. '11. Oregon, the Most Complete Democracy in the World. Frederick C. Howe.

Describes the origin of the Oregon law and its workings down to date.

*Independent. 54: 429-31 F. 20, '02. Referendum in the United States. John Bates Clark.

*Independent. 54: 2789-90. N. 20, '02. Referendum.

Independent. 56: 221. Ja. 28, '04. Referendum Upheld.

Independent. 57: 1277-8. D. 1, '04. Practical Referendum.

*Independent. 64: 595-6. Mr. 12, '08. Direct Legislation Movement.

Independent. 64: 1191-5. My. 28, '08. Initiative and Referendum in Oregon. George A. Thacher.

Condensed from the American Political Science Association Proceedings. 4: 198-24. '07.

*Independent. 64: 1444-7. Je. 25, '08. Oregon Election. George A. Thacher.

Independent. 66: 432-3. F. 25, '09. Recall of the Mayor of Los Angeles.

Independent. 66: 861-3. Ap. 22, '09. Recall of the Mayor of Los Angeles. Reynold E. Blight.

Independent. 67: 222-3. Jl. 29, '09. Cleveland Referendum, August 3. Edward W. Bemis.

Independent. 68: 1374-8. Je. 23, '10. Oregon's Struggle for Purity in Politics. Jonathan Bourne, Jr.

Independent. 71: 606-7. S. 14, '11. Weapon of Precision.

Independent. 73: 511-3. Ag. 29, '12. Progress in Direct Legislation.

International Journal of Ethics. 6: 509-15. Jl. '96. Direct Legislation Defended. Eltweed Pomeroy.

A reply to A. L. Lowell, International Journal of Ethics. 6: 51-63. O. '95.

*International Journal of Ethics. 13: 133-51. Ja. '03. Moral Aspects of the Referendum. Langdon C. Stewardson.

Lippincott's. 55: 855-8. Je. '95. Referendum and the Senate. William D. McCrackan.

Living Age. 188: 150-8. Ja. 17, '91. Switzerland as a School of Politics. A. W. Hutton.

Living Age. 255: 451-61. N. 23, '07. Swiss Referendum as an Instrument of Democracy. John A. Hobson.

This article is also published in the Contemporary Review. 92: 504-18. O. '07.

Municipal Affairs. 6: 781-6. Winter, '02-'03. Referendum and Initiative in Relation to Municipal Ownership. George H. Shibley.

Municipal Affairs. 6: 851-6. Winter. '02-'03. Direct Legislation: Address before the National Convention on Municipal Ownership and Public Franchises, 1903. Eltweed Pomeroy.

Munsey's Magazine. 45: 19-26. Ap. '11. People's Rule Movement: How the Citizens of the United States Are Securing More Direct Control of the Government. Judson C. Welliver.

Munsey's Magazine. 46: 329-34. D. '11. Initiative and Recall: Advance of the Movement to Increase the People's Control Over Their Government. Judson C. Welliver.

*Nation. 74: 364-5. My. 8, '02. Municipal Referendum. B. J. Ramage.

Nation. 80: 456-7. Je. 8, '05. Open-Air Parliaments in Switzerland.

National Review. 22: 738-41. F. '94. Appeal to the Lords. J. St. Loe Strachey.

National Review. 23: 196-200. Ap '94. Referendum. J. St. Loe Strachey.

*New England Magazine, n. s. 11: 448-59. D. '94. Swiss Solutions of American Problems. William D. McCrackan.

New England Magazine, n. s. 40: 405-11. Je. '09. Initiative and Referendum: An Effective Ally of Representative Government. Lewis Jerome Johnson.

Nineteenth Century. 69: 21-33. Ja. '11. Great Democratic Reform. Harold Cox.

North American Review. 165: 240-6. Ag. '97. Menace of Legislation. James H. Eckels.

North American Review. 170: 367-83. Mr. '00. We Are Too Much Governed. David B. Hill.

*North American Review. 177: 78-85. Jl. '03. Constitutional Initiative. Lucius F. C. Garvin.

*North American Review. 185: 69-74. My. 3, '07. People as Legislators. Charles W. Fulton

Outlook. 72: 618. N. 15, '02. Direct Legislation Victory.

Outlook. 72: 867-8. D. 13, '02. Referendum in Ontario.

*Outlook. 72: 916-7. D. 20, '02. Another Victory for Direct Legislation.

Outlook. 74: 442-3. Je. 20, '03. Further Gains for Direct Legislation.

Outlook. 78: 472-5. O. 22, '04. Political Experiment. Charles Dwight Willard.

The recall was effective in Los Angeles in removing a member of the council.

Outlook. 83: 612-4. Jl. 14, '06. Significance of the Oregon Experiment. George A. Thacher.

Outlook. 89: 313*-4*. Je. 13, '08. Singular Political Situation.

*Outlook. 89: 831-2. Ag. 15, '08. Experiments in Democracy.

Outlook. 91: 757-8. Ap. 3, '09. House-Cleaning in Los Angeles.

Outlook. 92: 914. Ag. 21, '09. How the Referendum Works.

Outlook. 96: 321-30. O. 8, '10. Popular Government in Oregon. Jonathan Bourne, Jr.

This article is in large part the substance of a speech delivered by Senator Bourne in the United States Senate, May 5, 1910.

Pacific Monthly. 17: 563-75. My. '07. Initiative and Referendum—Oregon's "Big Stick." Lute Pease.

Pennsylvania Grange News. S. '04. People's Sovereignty vs. Trustocracy.

The outline of a complete argument in favor of the initiative and referendum is given on pages 102-5.

Political Science Quarterly. 13: 1-18. Mr. '98. Constitutional Referendum in California. Samuel E. Moffett.

Political Science Quarterly. 17: 609-30. D. '02. Referendum and Initiative in City Government. John Rogers Commons.

The initiative and referendum, used in city government, would settle questions of policy and leave the municipal officers free to work out the business end of the administration without being disturbed by political influence. It means a separation of the business and political interests of the city.

Political Science Quarterly. 23: 577-86. D. '08. Popular Legislation in the United States: The Development of the System. Charles Sumner Lobingier.

Political Science Quarterly. 26: 432-42. S. '11. People's Rule in Municipal Affairs. George H. Haynes.

Public. 11: 278-9. Je. 19, '08. Test of the Referendum. Herbert S. Bigelow.

Public. 11: 320-3. Jl. 3, '08. Oregon Situation in Full. C. E. S. Wood.

Public. 15: 846-7. S. 6, '12. Direct Legislation. Victor E. Fehrnstrom.

Public Opinion. 18: 440. Ap. 25, '95. Referendum and Initiative in Switzerland. J. M. Gregory.

Public Opinion. 23: 583. N. 4, '97. Direct Legislation: What It Is. David Inglis.

Quarterly Review. 212: 538-62. Ap. '10. Referendum and Its Critics. A. V. Dicey.

In favor of adopting the Referendum in England.

Review of Reviews. 17: 443-5. Ap. '98. Referendum and the Swiss Railroads. J. R. Macdonald.

Review of Reviews. 21: 87. Ja. '00. Demand for the Referendum.

Quoted from an article by J. R. Commons in the Arena. 22: 725-39. D. '99.

Reviews of Reviews. 28: 480-1. O. '03. Direct Legislation in New Zealand.

Quotes from an article by H. G. Ell, in the Arena. 30: 268-72. S. '03.

Review of Reviews. 29: 584-7. My. '04. Chicago's Significant Election and Referendum. Victor S. Yarros.

*Review of Reviews. 34: 172-6. Ag. '06. Oregon as a Political Experiment Station. Joseph Schafer.

Review of Reviews. 35: 748-51. Je. '07. Democracy and the Referendum in Oregon.

Review of Reviews. 38: 21. Jl. '08. Initiative and Referendum.

Spectator. 63: 425-6. O. 5, '89. Weight of the Mass Vote.

Spectator. 71: 904-5. D. 23, '93. Referendum in America.

Spectator. 72: 188-9. F. 10, '94. Mr. Balfour on the Referendum.

Spectator. 73: 494-5. O. 13, '94. Referendum in America.

Westminster Review. 157: 357-65. Ap. '02. Representation-Federation-Referendum; a Programme. L. Stockton.

Westminster Review. 168: 675-90. D. '07. Will of the People. S. Hutcheson Harris.

World To-Day. 11: 1268-72. D. '06. Referendum at Work. William Macleod Raine.

World To-Day. 15: 857-60. Ag. '08. Oregon: The Home of Direct Legislation. E. E. De Cou.

World's Work. 22: 14437-8. Je. '11. Trusting the People's Judgment.

Negative

*American Journal of Sociology. 10: 713-49. My. '05. Popular Initiative as a Method of Legislation and Political Control. William Horace Brown.

American Political Science Review. 6: sup. 122-35. F. '12. State Political Reorganization. Herbert Croly.

American Political Science Review. 7: sup. 149-54. F. '13. Certain Retrogressive Policies of the Progressive Party. Frederick J. Stimson.

Arena. 24: 493-505. N. '00. Direct Legislation in America. Ellis Paxson Oberholtzer.

Atlantic Monthly. 63: 433-41. Ap. '89. People in Government. H. C. Merwin.

*Atlantic Monthly. 73: 517-26. Ap. '94. Referendum in Switzerland and in America. Abbott Lawrence Lowell.

*Atlantic Monthly. 97: 792-6. Je. '06. Constitution-Mending and the Initiative. Frank Foxcroft.

Atlantic Monthly. 108: 454-66. O. '11. Representative as Against Direct Government. S. W. McCall.

Atlantic Monthly. 109: 429-32. Mr. '12. Oregon's Initiative and Referendum Again. L. B. Shippee.

Congressional Record. 47: 2793-803. Jl. 11, '11. Government by Ballot. George Sutherland.

Same: Printed in pamphlet form. 31p. pa.

*Contemporary Review. 99: 11-9. Ja. '11. Initiative-Referendum in the United States. Frank Foxcroft.

Reprinted in full in Living Age. 268: 195-201. January 28, 1911.

Contemporary Review. 99: 303-7. Mr. '11. Referendum versus Representative Government. John Macdonell.

Edinburgh Review. 211: 131-54. Ja. '10. Referendum.

Forum. 45: 645-60. Je. '11. Political Innovations. H. W. Bonynge.

Green Bag. 10: 470-84. N. '98. Constitution or a Theory—Which? Ben S. Dean.

Advances three arguments against direct legislation: 1. Majority rule would sacrifice the interests of minorities; 2. Perpetual change in the constitution would result; 3. The states would be obliterated and a consolidated government would be formed which would be cumbersome and become monarchial.

Imperial and Asiatic Quarterly Review. 3d ser. 10: 101-13. Jl. '00. Referendum in Australia. G. B. Barton.

*Independent. 62: 1407-10. Je. 13, '07. Initiative and Referendum in Operation. Arthur Sherburne Hardy.

International Journal of Ethics. 6: 51-63. O. '95. Referendum and Initiative: Their Relation to the Interests of Labor in Switzerland and America. Abbott Lawrence Lowell.

Lippincott's. 92: 90-7. Jl. '13. When History Repeats. Willard French.

Living Age. 268: 195-201. Ja. 28, '11. Initiative-Referendum in the United States. Frank Foxcroft.

Reprinted in full from Contemporary Review. 99: 11-9. January, 1911.

Macmillan's Magazine. 69: 15-21. N. '93. Appeal to the People. C. B. Roylance-Kent.

Nation. 58: 206. Mr. 22, '94. Referendum.

A decision of the Massachusetts Supreme Court in regard to the constitutionality of an act referring the question of woman suffrage to the people.

*Nation. 59: 152-3. Ag. 30, '94. How the Referendum Would Work.

*Nation. 59: 193-4. S. 13, '94. Vox Populi in Switzerland. Albert Bushnell Hart.

Nation. 93: 256. S. 21, '11. Maine and the Referendum.

Nation. 93: 543. D. 7, '11. Direct Legislation in California. Howard L. Smith.

*North American Review. 190: 222-30. Ag. '09. Representative Government versus the Initiative and Primary Nominations. Henry M. Campbell.

*North American Review. 198: 145-60. Ag. '13. Direct Rule of the People. George Kennan.

Outlook. 99: 802-4. D. 2, '11. How Not to Do It; Referendum in New York.

Political Science Quarterly. 20: 443-55. S. '05. Direct Legislation and Its Prospects in the United States. W. Rodman Peabody.

*Political Science Quarterly. 23: 587-603. D. '08. Popular Legislation in the United States; The Value of the System. John Bell Sanborn.

Review of Reviews. 22: 224. Ag. '00. Objections to the Referendum.

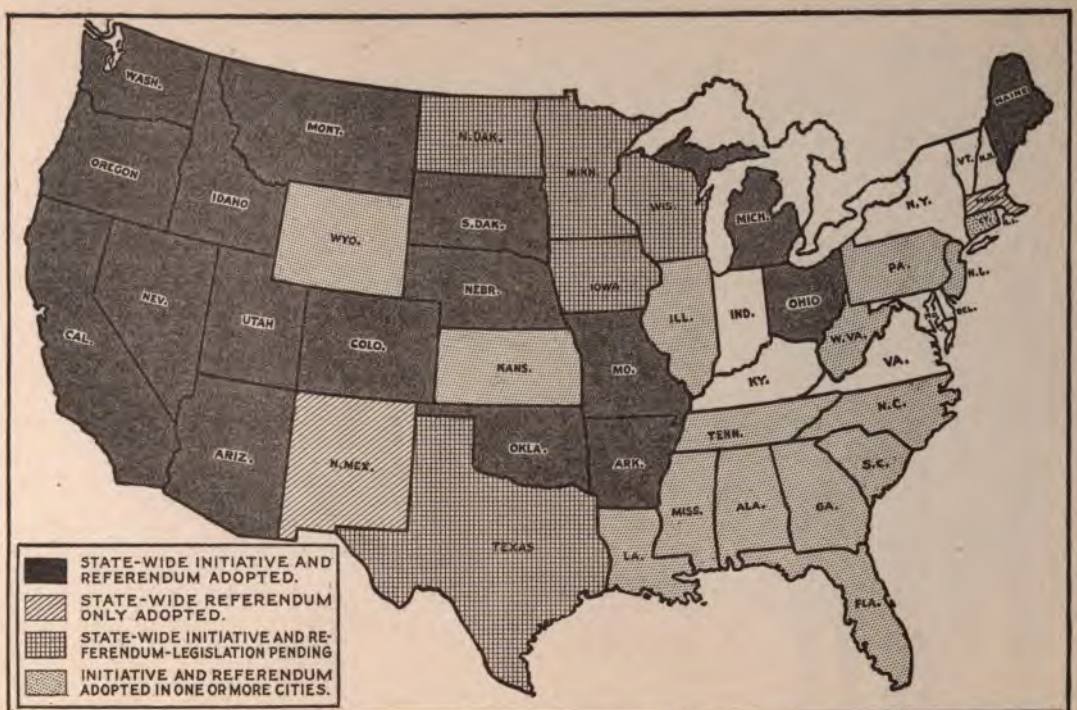
Largely a quotation from an article by Edwin Maxey in the Arena. 24: 47-52. Jl. '00.

Spectator. 67: 556-7. O. 24, '91. Limits of the Referendum.

Westminster Review. 175: 117-23. F. '11. Unionist Revolution. H. J. Darnton Fraser.

The introduction of the Referendum would mark the complete reversal of the traditional English policy of government.

Westminster Review. 176: 243-9. S. '11. Referendum and Representative Government. H. D. Henderson.



STATUS OF INITIATIVE AND REFERENDUM IN THE UNITED STATES, APRIL, 8, 1914.

PRESENT STATUS OF THE STATE-WIDE INITIATIVE AND REFERENDUM

ARIZONA.—Adopted in 1911 as a part of the Constitution under which Arizona was admitted to statehood.

ARKANSAS.—Adopted in 1910.

CALIFORNIA.—Adopted in 1911.

COLORADO.—Adopted in 1910.

IDAHO.—Adopted in 1912.

IOWA.—A constitutional amendment was passed by the legislature in 1913, but must pass the legislature a second time and then be submitted to popular vote before going into effect.

MAINE.—Adopted in 1908.

MASSACHUSETTS.—Adopted the Referendum only, in 1913.

MICHIGAN.—Adopted in 1913.

MINNESOTA.—A constitutional amendment passed the legislature in 1913; will be submitted to the people in 1914.

MISSISSIPPI.—A constitutional amendment was submitted to popular vote in 1912 but failed to receive the necessary majority.

MISSOURI.—Adopted in 1908.

MONTANA.—Adopted in 1906.

NEBRASKA.—Adopted in 1912.

NEVADA.—The Referendum was adopted in 1904 and the Initiative in 1912.

NEW MEXICO.—Adopted the Referendum only, in 1911, as a part of the Constitution under which New Mexico was admitted to statehood.

NORTH DAKOTA.—Constitutional amendments for the Initiative and Referendum were passed by the legislature in 1913; will be submitted to popular vote in 1914.

OHIO.—Adopted in 1912.

OKLAHOMA.—Adopted in 1907 as a part of the Constitution under which Oklahoma was admitted to statehood.

OREGON.—Adopted in 1902.

SOUTH DAKOTA.—Adopted in 1898.

TEXAS.—A constitutional amendment was passed by the legislature in 1913; will be submitted to popular vote in 1914.

UTAH.—Adopted in 1900 by constitutional amendment but no legislation has been enacted for putting it into effect.

WASHINGTON.—Adopted in 1912.

WISCONSIN.—Constitutional amendment passed by the legislature in 1913; will be submitted to the people in 1914.

WYOMING.—A constitutional amendment was submitted to popular vote in 1912 but failed to receive the necessary majority of votes.

SELECTED ARTICLES ON THE INITIATIVE AND REFERENDUM

INTRODUCTION

The growing failure of the legislatures to respond readily to the will of the people has resulted in a rapidly increasing demand for the direct participation of the electors in legislative affairs. Since the adoption, in 1899, of the Initiative and Referendum into the constitution of South Dakota, Direct Legislation, as the Initiative and Referendum together are often called, has become increasingly popular, until to-day, it has received consideration in at least twenty states, eleven of which have adopted it in varying forms.

Although Direct Legislation is a comparatively new feature in American legislative machinery, it is the outgrowth of an institution which has existed for centuries, i. e., the Swiss *Landesgemeinde*. From time immemorial, the voters of the Swiss canton of Uri have been accustomed to meet in popular assembly once a year to elect officers and to pass laws and resolutions for the government of the canton. This is the *Landesgemeinde,* which still remains the legislative body of Uri, and also of the cantons of Appenzell, Glarus, and the Unterwalden. The chief magistrate presides at this assembly and every voter has an equal right to propose or to vote upon measures. After a legislative session of a few hours, the new magistrates are sworn in, and the meeting adjourns until the following year.

Obviously, the *Landesgemeinde* was impracticable in the more populous cantons, but its principles were incorporated into the constitutions of the other cantons, and also into the Federal Constitution, in the form of the Initiative and Referendum. A legislative assembly, selected by the people, proposes and enacts laws which are then referred to the people for approval or rejection at the polls. This is the Referendum. It may be compulsory, all measures being referred to the people, or it may be optional, in which case a law is referred only when such reference is demanded by a petition signed by a fixed percentage of the voters. The Referendum is compulsory in all the cantons and in the Federal Government also, for revisions of the constitution. For ordinary laws and statutes it is compulsory in a number of the cantons and optional in the remaining cantons and the Federal Government. Vaud and Schwyz employ both forms, while in Freiburg, the Referendum is unknown except for amendments to the constitution.

The Swiss voter also has the privilege of proposing a law which he desires but which the legislative body neglects or refuses to pass. This privilege is the Initiative. By it, a certain percentage of the electorate may frame a law and compel it to be submitted to popular vote at the next election. All the cantons but one now employ the Initiative for ordinary laws and statutes, and all but three for changes in the cantonal constitution. As a Federal instrument, the Initiative applies to Constitutional amendments alone.

These Swiss institutions are by no means entirely foreign to our legislative systems. One of our own institutions, which has existed since colonial times, the New England town meeting, is the exact counterpart of the *Landesgemeinde*. Moreover, the practice has grown gradually of employing the Referendum in the adoption and amendment of state constitutions, until it is now compulsory in every state but one for constitutional questions. Almost imperceptibly the Referendum has been extended to statutory law also, and it is now employed in nearly every state of the Union for determining the popular opinion on such questions as the voting of

debts or franchises, local option, and changes in county seats, capitals or boundaries.

But the incorporation of the Initiative and Referendum into state constitutions as a part of the regular legislative machinery is of recent origin. With the growth of corporations, came the evils of legislation in favor of special interests, boss-rule, log-rolling, bribery and the like, and to combat these evils, associations and leagues were formed for the purpose of studying them and devising suitable remedies. The attention of such leagues was called to the similarity between Swiss and American institutions, and to the effectiveness of the Initiative and Referendum as a cure for just such evils as the American people had to contend with. The People's Power League of New York began agitation in favor of the Initiative and Referendum in 1891, and in 1899, South Dakota adopted a constitutional amendment providing for the employment of these institutions in both constitutional and statutory law.

The Initiative and Referendum are now provided for by constitutional amendment in the states of Oklahoma, Oregon, South Dakota, Utah, Missouri, Maine, and Montana. They are employed both for constitutional and statutory questions except in Maine and Montana where they are used for statutory law only. At present Nevada has the Referendum alone, but a constitutional amendment is now under consideration providing for the Initiative also. In Illinois, the Initiative, and in Delaware, the Initiative and Referendum, are advisory only, the legislators being at liberty to heed the popular expression of opinion or to ignore it as they choose. In Texas the Initiative may be used by any political party at the direct primaries for the purpose of securing a vote on party policies. Direct Legislation is also under consideration in many other states, and amendments for its adoption have already been proposed in Arkansas and North Dakota.

As a rule, Initiative petitions must be signed by five per cent of the legal voters, contain the text of the proposed measure in full, and be filed with the secretary of the state, within a stated time of the next election, or the opening day

of the next legislative session. Such measures are usually submitted direct to popular vote, but in some states, they are submitted to the legislature. If the legislature rejects or ignores the measure, or amends it in any way, the bill, as proposed in the initiative petition, is submitted to the people at the next election, together with the bill as amended by the legislature. The people's choice becomes law.

Referendum petitions must be signed by from five to ten per cent of the legal voters of the state, and must be filed with the secretary of state, usually within ninety days after the adjournment of the legislature. Such a petition may be submitted for any law except emergency measures which are exempt, and the governor's veto has no power over measures submitted to the people.

The Initiative and Referendum have also been extended to problems of city government, especially the voting of debts or franchises, or questions of the extension of the city limits, and the liquor problem. They are employed in Des Moines, Detroit, Nashville, Minneapolis, in all the cities of Oklahoma, Oregon, Nebraska, South Dakota, and many others. Denver adopted an amendment to her city charter in 1910, providing for the Initiative and Referendum, and in March, 1911, Governor Johnson of California signed a bill providing the Initiative, Referendum and Recall for all municipalities. The Canadian cities of Toronto and Victoria also employ the Initiative and Referendum.

These institutions are by no means confined to Switzerland and the United States altho they are of less importance elsewhere. A strong movement is on foot at the present time in France and Norway for the adoption of the Initiative and Referendum, especially in municipal affairs. They are employed in New Zealand in the settlement of tax and liquor questions, and their extension to other questions is now advocated. The Referendum has been a permanent feature of the constitution of the Australian Commonwealth, ever since this union was formed. In England, Lord Balfour recently proposed that the Referendum be employed for the settlement of grave constitutional questions, and in March, 1911, a bill

was introduced in the House of Lords providing for it. This bill is now under discussion.

Direct Legislation is not intended to supplant the present system of law-making by our legislative bodies, but only to supplement it. The purpose in view is to make the legislative body more responsive to the people, by enabling the voters themselves to enact laws desired by a majority, which the legislatures fail or refuse to pass, and to repeal laws passed by the legislatures contrary to the will of the people.

SELECTED ARTICLES

American Journal of Sociology. 10: 713-49. May, 1905.

Popular Initiative as a Method of Legislation and Political Control. William Horace Brown.

Besides the lack of information which necessarily incapacitates the mass of voters from deciding intelligently about public measures, and prejudices that too often govern them, the venality of large numbers must be taken into account. The alleged virtue of the initiative is based upon the honesty, even more than upon the intelligence, of the masses. Yet it is as true as it is deplorable that time and again results of elections, municipal and state, if not national, have been obtained by the direct bribery of voters. This has occurred repeatedly in states where the average of intelligence and respectability is high, as well as in cities and wards of mixed and less enlightened populations. In Indiana, on the testimony of ex-Governor Durbin (and it has for years been common knowledge among politicians), there are tens of thousands of purchasable voters—voters who are in the market with their wares at every election. Rhode Island is as bad, or worse. That has been shown frequently, last by Lincoln Steffens. The negro vote, in northern cities especially, is always largely purchasable; but it is not alone the negro, or the foreigner, but Americans, white and presumably respectable.

Annals of the American Academy. 4: 883-903. May, 1894.

Reform of our State Governments. Gamaliel Bradford.

That the people throughout the country have come to distrust and fear the legislatures is evident from the tendency of consti-

tution making and amendment, which is steadily toward restricting the powers of the legislatures. According to the pamphlet of Mr. Davis, already referred to, out of thirty-eight state constitutions in 1885, twenty-five allowed the legislature to come together only in every other year; eighteen limited the length of the session to periods varying from forty to ninety days; in eleven, the legislature in special sessions could take up only the subjects named in the call; twenty-five required that all bills should be read on three separate days; in twenty-seven, bills must contain only one subject, expressed in the title; six prohibited general or salary bills from containing anything else; twenty-three prohibited amendment of any act by title, the full text must be quoted; nineteen required that all bills must be passed by a majority of the members elected, voting by ayes and noes; thirty embodied in their constitutions provisions forbidding special legislation, twenty totally and ten partially. But such attempts must fail to effect any permanent or adequate reform, much for the same reason that it is useless to try to repair a leaking dam by plastering it from the outside.

The same tendency is shown in efforts to improve the character of the legislatures. Such are minority and proportional representation, compulsory voting, female suffrage, acts to prevent bribery and corruption, urgent appeals to the voters to attend the primaries, better education of the people, and so on. But these, again, cannot reach the want, because the main difficulty is not in the composition of the legislatures, but in their usurpation of executive power, and the fatal effects upon their character of their attempts to wield it.

The real remedy is to draw the line clearly between executive and legislative power, to assign to each branch that which properly belongs to it, and secure each from encroachment by the other, by giving to both equal opportunities of defending their rights before that which, in this country, we regard as the final tribunal, the people.

Annals of the American Academy. 6: 361-70. November, 1895.

Recent Political Experiments in the Swiss Democracy.

Louis Wuarin.

The referendum and the right of initiative have given rise to some objections. The former, it has been said, is essentially negative, it has canceled a great many measures enacted by the authorities, it impedes legislative work. This is an exaggeration. The rejected measures fell by the verdict of the public because there was something in them which the people did not approve. Later on those laws are taken up again by the legislature or chamber. After they have been revised so as to form a kind of second edition, they are then adopted or ratified by the people, without difficulty.

The right of initiative, it is alleged, has thus far only resulted in federal matters—and, cantonally, it must work in much the same way—in bringing about strange results. In its first operation, two years ago, it introduced a law against the Jewish mode of slaughtering cattle; in the second one, on the third of June, 1894, it endeavored to have the "right to employment" acknowledged by the constitution; this was rejected. Before coming to the third and last operation, let us pause a moment. Here our answer, in presence of such facts, is that the right of initiative, especially at the outset, was expected to have some awkward consequences. But where is the serious harm it may be instrumental in doing? It can incorporate in the constitution things of a queer appearance, such as the butchery ordinance of 1893, but these apparently awkward measures happen to be in accordance with the popular wish. This is democracy. It can also deal with proposals of an impractical, dangerous, socialistic character, as the right to labor, but in an enlightened community such schemes are sure to meet with a decisive opposition, and in such circumstances the resort to the plebiscite has the effect of purging the political atmosphere of chimerical and distracting elements. This clearing of the ground has been generally acknowledged to be most useful.

But let us come now to the third and last case in which, up to the present time, the right of popular initiative was resorted to. The question at issue originated among the Catholic and some Protestant Conservatives, and was soon known under the very appropriate name of the "spoils campaign" (*Beutezug*). The bill framed on this occasion by the initiators aimed at obtaining money from the federal treasury for the different cantons which was to be apportioned at the rate of two francs per head of population.

The chances of success for the new crusade were great at the start. The federal government had caused some dissatisfaction by exaggerated expenses and by somewhat undemocratic conduct toward the wishes of the people. A few days before the popular vote, there appeared in one of our periodicals a discussion of the question by M. Numa Droz, late president of the Swiss Confederation. He said that the referendum was good for the welfare of our commonwealth as a means of controlling the work of the lawmakers, but he considered the introduction of the right of initiative as the beginning of the era of demagogy. If the "spoils campaign" should succeed, said he, the basis of our public law would be altered and shaken, and no other resource would remain to the friends of democracy than to call together a convention in order to frame a new Swiss constitution, doing away with such exaggerations of democracy. Never since the agitation of 1848 had Switzerland experienced such a vital crisis.

But the "spoils campaign" was defeated by more than two to one in the vote of the fourth of November last. The atmosphere suddenly cleared. The fears expressed by M. Droz van ished. Everyone felt that the Swiss people was ready for direct democracy. The *Temps* of Paris echoed such views and said that the Swiss democratic institutions were now proven safe. It is to be observed that the same paper had begun by asserting that they would upset our democracy.

Arena. 19: 505-19. April, 1898.

Brookline: A Model Town under the Referendum.
B. O. Flower.

Brookline, perhaps, furnishes the best illustration in America of the possibility of direct legislation in municipal government, as will be seen when we come to notice the grave and complex problems which a town of 17,000 is compelled to grapple with.

The board of selectmen, who are of course elected by the citizens, are the principal prudential officers of the town. They hold weekly meetings, at which they listen to the suggestions, propositions, and complaints or grievances of such citizens as desire to lay before the board matters in which they have an interest. This body also sends out the warrants, containing announcements of the various town meetings, and setting forth under separate heads the various questions upon which the citizens will be required to vote at the ensuing meeting. These warrants are placed in the homes of all voters several days before the time for the meeting, so that all citizens can fully investigate each proposition and arrive at an intelligent conclusion before the time when he is expected to express his desires. Most of the articles in the warrants are prepared by the selectmen or other town officers, although it is said that frequently other townsmen take the initiative in this matter.

A committee of twenty prominent townsmen assist in facilitating the transaction of the business of the town by examining into the requirements, demands, and propositions, and then making a clear and concise report to the townsmen before the meeting. Sometimes there are majority and minority reports; and though the recommendations of the committee are usually accepted by the voters at the town meetings, it not unfrequently happens that the vote is not in conformity with the recommendation of the committee. This committee is unquestionably a great aid to both the selectmen and the townsmen, enabling the town to expeditiously handle its rapidly growing volume of business. The fact that no measures are voted on until the reports and warrants have been placed in the homes of the voters from one

to two weeks before any action is taken on any question prevents any dark-lantern methods; and as every voter is given the opportunity to speak on any measure, as well as to vote for or against it, the town is brought under a more purely democratic form of government than can be found in most parts of our republic.

Before the annual town meeting, the heads of all departments make out and submit to the board of selectmen full and detailed reports for the past year, together with estimates and suggestions as to needs for the ensuing year. These reports, together with the report of the selectmen, are printed in a volume, which has now grown to be of almost six hundred pages, a copy of which is placed in the home of every voter. It contains the itemized accounts of all expenditures, so that, after close scrutiny of the reports, every voter can at the town meeting interrogate the officials or call for explanation, should anything in the accounts or other part of the records in his judgment call for explanation.

In so far as public servants are concerned, the town of Brookline is run on the same principles as those on which successful men carry on private business enterprises. Those officers who have proved themselves honest, capable, and eminently fitted for their duties are retained in office from year to year. Thus we find that Mr. Benjamin F. Baker, the universally respected town clerk, has held his honorable office acceptably for forty-five years. He has given the best of a long life to the loyal service of the town which has so long honored him, and it is stated that he is the father of more measures of practical value to the village than any other of her townsmen. In the present day, when officials are generally surrounded by an army of assistants, who do all clerical work, it is interesting to know that the town clerk of Brookline has for forty-five years preserved the custom of keeping the village records with his own hands. The treasurer of Brookline, Mr. George H. Worthley, has held his office for twelve years; and his predecessor was first elected in 1849. Except for one year, the chairman of the board of selectmen has been a member of the board for thirty years. The townsmen of Brookline have shown great wisdom in keeping pol-

itics out of the management of the municipality, and also in retaining in office those servants who have proved exceptionally able and conscientious.

Few if any towns or cities of America can show so creditable a record as Brookline in regard to honesty, wisdom, and economy in the management of public affairs, together with a broad and liberal policy touching all public provisions which affect the well-being and happiness of the community.

It has often been argued by those who distrust the people, that, while the management of a small village, especially if isolated from large cities, could be satisfactorily conducted by the methods of direct legislation, it would be altogether impracticable for a town of ten or twelve thousand people to attempt this simple and primitive method of government, as the problems would be too complex, too serious in character, and too multitudinous, and the expenditure would be so great that it would be neither safe, practical, nor possible to effectually carry out the more ideal theories of direct legislation in municipal government. The management of the town of Brookline furnishes an admirable refutation of this objection. Here is found a population of seventeen thousand persons, wholly surrounded by Boston and Newton, and confronted with the serious problems which cities of similar size have to meet. Indeed, the responsibilities are greater in many ways than those of most cities of from 15,000 to 20,000 inhabitants. Take the question of expenditure, for example. The village has recently voted to appropriate $250,000, chiefly for public institutions, such as new schoolhouses and a court and police building, while the annual disbursements for public utilities and service are very great. Then the annual school expenses are over $125,000. The care, watering, and cleaning of the streets and sidewalks, and also of the parks, and the lighting of the town, cost about $150,000. The water and sewerage departments require over $70,000; the fire, police, health, and other kindred protective departments call for about $120,000. The disbursement of all these amounts is so managed that the opportunities for "leaks" usually found in city governments are not found here. The itemized bills of expenditure in the various reports, subject to the careful scrutiny

of the voters, who are expected to call for explanation on any point where charges seem too large, serve a wholesome purpose.

It has been argued that the business of a city with a population of 10,000 or more would be cumbersome, that it would be impossible to carry it on expeditiously, if all the people had a direct vote on all important measures; yet here this principle has been in practical operation for nearly two centuries without any inconvenience. Though the town has increased until its population is between 15,000 and 20,000, the work is so systematized that there is practically no more difficulty in carrying on the government expeditiously and satisfactorily than in the old days when the population numbered only hundreds.

Another objection has been, that in a municipality where there is much wealth, the poor would vote heavy burdens on the town, by which the rich would have to pay enormous taxes; or that the rich would band themselves together and so use the public funds as to discriminate against the poor. In Brookline absolutely no spirit of this kind is visible; rich and poor work enthusiastically for the upbuilding of the community. The town is liberal but by no means extravagant, and there is no friction or bitterness. That there are heated and earnest discussions at the town meetings goes without saying, nor could we expect it to be otherwise; but when the vote has been taken, all parties are as one in carrying out the will of the majority, as registered in the large hall, where the poorest voter's voice counts for as much as that of the richest. When dwelling on the great success of the referendum principle in this town, however, it should be stated that the standard of intelligence is very high, and that the public spirit, or the pride in home government, is very pronounced. The best townspeople are ever ready to give their time, thought, and best energies to furthering any work which the public sentiment calls for, and to which the voters have given their approval.

From what I have seen and learned of the actual working of the referendum principle in municipal governments here and elsewhere, I am convinced that it is not only practical, but imperatively demanded by present conditions if a truly republican form of local government is to be preserved, and if an eco-

nomical, honest, and disinterested public service is to take the place of ring and boss rule. This is one of the most serious problems which confront urban populations, and I believe that in the village of Brookline will be found a lesson worthy of the thoughtful consideration of serious people. If Brookline has any special message to give to sister municipalities, I think it may be summed up in this sentence: Stimulate public sentiment and the local pride of the citizens in the home government; maintain a high standard of intelligence in the community; and in regard to municipal affairs let the watchword be, Back to the people.

Arena. 22: 725-39. December, 1899.

Direct Legislation in Switzerland and America.
John Rogers Commons.

By direct legislation is meant the following:

1. *The Optional Referendum.*—The right of a fraction of the voters—say five per cent—to require by petition that a law or ordinance adopted by the legislature, Congress, or a municipal council shall be submitted to popular vote.

2. *The Compulsory Referendum.*—The constitutional requirement that *all* laws and ordinances (excepting urgency measures and the existing budget) be submitted to popular vote.

3. *The Initiative.*—The right of an individual or group of voters to draw up a completely formulated bill and to require, upon petition of say five per cent. of the voters, that the bill without amendment shall be submitted to popular vote.

A majority of votes cast decides in each case.

American examples of the *compulsory referendum* are the vote on state constitutions and constitutional amendments; local option or liquor-selling; municipal and town vote on borrowing money, purchasing or erecting water-works, gas, or electric-light plants, or constructing large public improvements. The *optional referendum* and the *initiative* have been recently adopted with various modifications in South Dakota, Nebraska, and San Francisco, Cal. The Swiss Confederation and every Swiss canton (except one) have adopted the three forms of direct legisla-

tion. The genuineness of direct legislation depends upon the details. It may be so hedged in by hostile restrictions as to be almost worthless. Such restrictions are, for example, the excessive number of petitioners required, as in Nebraska—fifteen per cent.; vexatious obstacles to legal signatures; formalities, time limits, etc.

Some of the explanations offered to account for the success of direct legislation in Switzerland show a curious reversal of cause and effect. They seem to imply that the Swiss people dropped into the initiative and referendum through the possession of some unexplained hereditary instinct, just as an insect flies to its proper food without being taught. It is said that direct legislation is successful in Switzerland while it would not be so in England and America, because the Swiss have no hard-and-fast "parties;" because they have greater respect for one another's opinions; because they do not have wide extremes of wealth; because they do not vote against legislators for reëlection even though they vote against the laws of these same legislators at the referendum; because they are a quiet, peaceable, home-staying folk, etc. It is true that these qualities accompany successful direct legislation; but they are its fruits, not its soil. They are results of the referendum, not its causes. The Swiss were at one time the mercenary soldiers of European kings and dukes, and they brought to their homes the low morals and turbulence of such a life. Yet it is agreed that, in the cantons that formerly were noted for violence and bloodshed, there has been a marked decline in homicide and other forms of crime since the introduction of lawmaking by the people.

The Swiss reëlect their legislators even when opposed to their politics—not because the Swiss have a kind of quaint, absurd instinct for keeping the same man always in office, but because they know that he does not have the final decision anyhow, and they are willing to have his expert advice even though they do not accept it. They employ their lawmakers as we do our lawyers and doctors—not to dictate what we shall buy and sell, eat and drink, but to arrange the details; to tell us *how* to buy and sell, and *how* to keep our health. Our family doctor is not a boss, and we keep him even when we violate all his

good advice. So the Swiss reëlect their lawmakers, not as lawmakers, but as a statutory revision commission. This is a result of the referendum, not a condition precedent.

The Swiss have not developed political parties because their direct lawmaking obviates the need of parties. It is an easy matter to get together a new party on each new question of importance as it arises. To introduce a measure into politics and get it enacted into law it is not necessary first to find a party that will adopt it in a platform, but those interested can place it directly on the statute-book by petition and popular vote. Where a party is relied upon to take up an issue, there is prospect of its repudiation after election, and voters must stay by the party and must accept all its other planks, even against their judgment, or else lose their favorite one. Consequently, party organization and party solidarity are the first conditions of success, and voters are even prone to place party above principles. Bitter execration follows the man that abandons his party—more bitter than that heaped upon the longstanding foe—because the party is the only means of successful political action. All this is absent in Switzerland. A standing party, with machinery always at work, is a waste of effort where the people can get the laws they want by direct vote.

Why do the Swiss people respect one another's opinions and consider it an indignity to influence another's vote at elections? Because they know that each man's opinions count. Each man votes directly upon issues; his votes for candidates are secondary. He is never humiliated by seeing his opinions spurned by the very legislators who before election pledged to support them. Opinions, like men, are seriously respected only when they have power. Then only do they truly *command* respect.

The Swiss people are free from the corrupting extremes of wealth, largely because the referendum headed off the encroachments of boodlers, bribers, and monopolists, together with all kinds of special legislation by which so many American fortunes have been created. Prior to the referendum Switzerland was going through an era of political villainy quite similar to that which the American people know so well. In fact Swiss politics from 1830 to 1860 reads quite like a chapter in current America.

It was no abstract philosophy nor democratic instinct that brought the referendum. The people were driven to it as the only certain means of expelling corrupt wealth from politics. The alliance between the private corporations—the railways and the banks—that furnished the funds and the politicians who manipulated the people was exactly that to which Americans are now slowly opening their eyes. No matter which of the two parties elected its candidates, the result was the same. Election promises were violated—the people were sold out. Franchises were granted, subsidies and tax exemptions were bestowed, and extremes of wealth and poverty were forced upon the people by law, simply because the lawmakers were absolute. They voted these special privileges; they received their share and their perquisites from the boodlers; they were building up political machines and controlling elections with these funds taken from the people, and there was no restraint. The referendum was the remedy. The Canton of Vaud adopted it immediately following an especially exasperating grant of subsidy to a railroad corporation. Other cantons followed. The movement is likened by Deploige to a perfect wave of democracy sweeping over the country. The remedy was complete. Switzerland was rescued from evils that now threaten the life of other democracies. No longer could lawmakers sell out the people; they could no longer "deliver the goods." The people themselves must ratify the sale. The referendum was the people's veto.

Direct legislation in Switzerland has abundantly shown that the people are safer than their rulers. Extremists have no hope in them. They vote down the bills of both reactionaries and radicals. This is true not merely in the country districts, but also in the cities, where the unpropertied working classes are supposed to show disregard of property rights. Direct legislation gives voice and influence to the great mass of home-loving, peaceable, industrious people, who make little agitation and who are not heard in the ordinary clamor of politics. Such people are fair-minded and love justice. They want only what they can earn, but they want it themselves. They are the bulwark of democracy. They cannot be crowded or dazed. They wait until they understand. Yet in the long run, at the second or

third voting, it is found that they are ready to accept progressive measures. They voted down government railroads twice, partly because of the exorbitant price the legislature agreed to pay to the private owners; but finally, when the question reached the stage where it excited almost no discussion, they voted in its favor by a large majority. So with other measures. Says M. Stüssi, in his notable account of direct legislation in the city of Zurich: "All laws useful to the canton have been accepted, even those which demanded considerable money sacrifices from the people. No law which would really have advanced either moral or material progress has been definitely laid aside. In those rare cases which seem to contradict this conclusion, the referendum has simply displayed its inherent ultra-conservative character and delayed an advance which would seem to most to be too rapid."

The foregoing discussion is intended to show that many of the arguments usually advanced for and against direct legislation miss its true position. Direct legislation is not strictly a means of legislation; it is a check on legislation. But none the less it is the most urgent proposition before the American public. While theoretically basing our government on the will of the people, we have been experimenting for a century to find a machine that will run itself independently of the people. But government is not merely a nice set of checks and balances, of vetoes and counter-vetoes. It is the outcome of the whole life of the people. The executive veto and the judiciary veto are irritating substitutes for the people's veto. Yet too much must not be expected from direct legislation. It is to be classed, not with legislation proper but with such devices as the secret ballot, the official primary, the corrupt practises acts. Its urgency is not as a means of bringing in reforms, but as a cure for bribery, spoils, and corruption. These are indeed the pressing evils of American politics. No reform movement, no citizens' union or the like, can fully cope with them. A despotism, a monarchy, an oligarchy, or an aristocracy can be corrupt and survive; for it depends upon the army. A republic or a democracy depends on mutual confidence; and, if bribery and corruption shatter

this confidence, it is of all forms of government the most despicable. It can survive only by the army and the police.

The referendum is the only complete and specific cure for bribery. It alone goes to the source of corruption. It deprives lawmakers and executives of their monopoly of legislation. The secret ballot, official primaries, civil service reform, proportional representation—these are all needful, but they leave to a few the monopoly of government and the power to sell at a monopoly price. If they should all be adopted, the immense interests dependent on legislation will pay not less but more money, and will control them. Even public ownership of public enterprises, although it ultimately destroys the largest corruption fund, must first be brought about by legislation; and this will be the signal for exorbitant prices and a carnival of bribery more profligate than any hitherto seen.

With the referendum the use of money, whether honest or corrupt, will be almost abolished. The main objection to the referendum is that it defeats sound reforms as well as "jobs," because the people lack confidence in their lawmakers. In the long run it is too conservative. It will disappoint the radicals who now advocate it. The conservatives who now oppose it will be its hottest champions. The initiative will give but little help in this direction. Other reforms, particularly proportional representation, are needed for progressive legislation. But that is in the future. Bribery and corruption must first be settled. Every citizen, whether conservative or radical, can unite at once on the referendum—the only death-blow to bribery. The political machine and the boss will then go, too; for they will have no corporation treasuries to feed upon. After that we can think of positive reforms.

Arena. 24: 47-52. July, 1900.

Referendum in America. Edwin Maxey.

But while I am in favor of a trial of the plan, the successful working of which I would hail with intense delight and satisfaction, I would not close my eyes to the fact that there are

many and weighty objections to it; hence, in a spirit of fairness I will present such as occur to me. In the first place, it is cumbersome, requiring machinery of the state to be brought into action for purposes for which it is not well adapted. It is also expensive. Nor is this a trifling matter, when we consider the necessary outlay for printing in the various newspapers and in holding the elections, which includes cost of ballots, rent of polling-rooms, pay of judges, inspectors, and clerks, and a reasonable estimate for time spent by voters. It would necessitate either that a great number of elections be held, which in itself would lead to turmoil and confusion, or that a number of bills be voted upon at the same election, in which case the voter could know very little of the merits of the bills upon which he was voting; hence, his judgment could have but little value.

The impossibility of the voter familiarizing himself with the bills upon which he is to pass will appear immediately from an inspection of the records of legislatures in such states as New York, Pennsylvania, Massachusetts, Ohio and Illinois; for, as a matter of fact, diligent legislators (for there *are* some diligent legislators), whose entire time and energy are spent in studying bills, are unfamiliar with many bills that are passed by their state legislatures.

It is hardly fair to legislation; for when submission of a bill is secured by petition it is *prima facie* evidence that it is objectionable, and to overcome this presumption would require a careful study of the bill, which the average voter has not the time to give. The above theory has proved to be the fact in Switzerland, where we find that nearly every bill submitted to the electorate is killed because of prejudged notions; and a large portion of bills thus rejected are found by careful, candid investigation to be wise measures. This is particularly true of appropriation bills, the majority of which were in no wise extravagant; but somehow most men have a constitutional aversion to paying taxes, and hence to ratify measures that will necessitate any increase in taxes. It might not lessen the amount of partizan legislation, but on the other hand it might increase it; for the demagogue would have a wider field and more occasions to mani-

fest that concern for the welfare of his fellow-men which is consuming in its intensity.

Men are, as a rule, better fitted and have greater confidence in their ability to pass upon the qualifications of legislators about whom they know considerable than upon measures about which they know very little. In other words, average men study biography much more carefully than they study political science; therefore, men more readily yield to the judgment of others as to the wisdom of a measure than as to the qualifications of a man. Thus it might infuse into our civic system more "peanut" politics, of which we are already suffering from an overdose. In fact, it is easily conceivable that the petition for submission might emanate from partizan motives rather than from a sense of the injustice or inexpediency of the measure.

It would essentially change the character of the legislature, by removing in large part its responsibility for legislation, until it would soon become little more than a drafting committee.

In its present state of development, the plan is defective in that it makes no provision for amending a bill or for striking out a mischievous clause from a bill otherwise unobjectionable. This defect could, however, be remedied in part by making such changes in it as we have made in the veto power of governors and mayors—by enabling them to veto specific clauses and thus cut off riders to appropriation bills, etc.

The power of the supreme court of the state in controlling legislation would be greatly weakened; for few courts, especially where the judges were elected, would declare a law unconstitutional after it had received the direct sanction of the people. It would cheapen constitutions; for, ordinary legislation having an equal sanction with the constitution, the tendency would be to consider all laws bearing the seal of the people as constitutional; hence, there would be no permanent constitution at all.

I do not assert that all these evils would result, but there is a possibility of it; and I think the possibility—nay, even the probability—is sufficient to make us guarded. Yet, as all systems of government are imperfect; as the plan under consideration is consistent with the genius of our political system and

would be politically educative, with at least nothing explosive about it; and as the best and in fact the only conclusive test of the feasibility of a plan is its actual working—I think that the facts amply justify a trial of the plan in question. If found to work well we would have made a valuable discovery in legislative science, and if it would not work well we would be convinced of that fact and would return to our present method better satisfied. I am fully aware of the aversion of many to experiments in political institutions, and I share this aversion, provided the experiment is unpromising or mischievous; but this is no wild-cat scheme, and has many commendable features. Perchance a trial plan would prove in this, as in the elective judiciary, that the actual working would force the logic of theory to give way to the logic of facts.

Arena. 28: 119-24. August, 1902.

Democratic vs. Aristocratic Government. Eltweed Pomeroy.

Article 29 of the constitution of the Canton of Zurich reads: "The right of voters to make proposals (the initiative) is the right to demand the adoption, abrogation, or modification of a law or decree. . . . When an individual or a political body presents a proposition of this sort, and it is supported by a third of the members of the council, it shall be submitted to the people for final action. . . . Likewise every proposition signed by 5,000 voters, or adopted in a certain number of communal assemblies by 5,000 voters, must be laid before the people whenever the cantonal council does not agree with it." This is the initiative.

The constitution of South Dakota reads: "Five per cent. of the electors . . . shall have the power by filing their signed demand with the secretary of state before May 1 after each legislative session to require that any act or part of an act passed by the legislative assembly shall be referred to the electors at a special election before July 1 after its passage, to become effective only if approved by a majority of the votes cast thereon." This is the referendum.

The two constitute direct legislation, or the complete control by the people all the time of the law-enacting power. It does not do away with legislatures; they remain as councilors to the people. This is their old function, as shown by the name, common council, given to most municipal legislative bodies. It puts the legislators at once above suspicion.

What are its results? First and foremost, a simplification and reduction of laws. In one year, according to ex-Senator D. B. Hill, there were 14,000 national and state laws passed; some of these were longer than the Justinian code, which governed the Roman empire for centuries, New York State in one year passed 1,027 laws, and at the end of the 1901 legislative session Gov. Odell vetoed 118 bills. In the decade from 1875 to 1885 the New York legislature passed an average of over 550 laws a year. North Carolina in 1901 passed 1,265 laws, or an average of one every fifteen minutes of the session. Bolton Hall, a member of the New York bar, makes the astounding statement that the citizen of Greater New York lives under 50,000 national and state laws, and this number does not include ordinances of the boards of health, education, etc. "Ignorance of the law excuses no one" is a legal maxim. In the cantons of Berne and Zurich where they have had a real democracy or government by the people, they have passed in the last twenty years less than five laws a year. These laws are short, simple, and easily understood. Many of our laws are complex, ambiguous, hard to understand. A recent congress had 24,000 measures before it for consideration, of which over a thousand passed. A recent Swiss legislative body considered 65 measures, of which 24 passed. Scientists tell us that the lower you get in the order of creation the more young are spawned at a time, of which few reach maturity, and the higher you get the fewer young are brought forth, but the larger proportion attain maturity. Our method of lawmaking is the productivity of low organisms. We spawn laws by hundreds and thousands, and few reach maturity.

The second great achievement of a really popular government is the decentralization of laws, and hence of having the laws made by each locality for itself, and from this follows their enforcement. The present mayor and the whole government of

New York City were elected on the distinct pledge that they would not enforce the Sunday liquor laws, and they must violate either that preëlection pledge or their oath of office. That law has been forced on New York City by the state legislature. Such a thing is unknown in Switzerland, and the Swiss people can hardly understand it. The appeal to the people can only be made on large general principles, and each locality is willing to concede to other localities the freedom it wants for itself. Thus the Swiss people refused to consolidate their cantonal militia establishment into one centralized body. J. W. Sullivan, writing in *The Direct Legislation Record,* says: "The commune asserts its right to local self-government through direct legislation. The canton on similar principles withholds its rights from the Confederation. Hence few laws above the commune's."

The third is the fact that it rarely needs to be used, but makes the legislature responsive to the people's wishes. The following incident illustrates how this is done. In October, 1896, the Swiss people voted by a big majority on the large general question of buying and operating the railroads, but the details were left to the national legislature to frame and submit. This they did not do until a voluntary committee had drafted a law for this purpose and secured almost the necessary 50,000 signatures to an initiative petition, when the legislature moved and passed the law, which was overwhelmingly carried on February 20, 1898. If the people had not had the right of the initiative, the legislature might never have acted.

The present governor of South Dakota is a Republican, and his party opposed the direct legislation amendment to the South Dakota constitution. He wrote recently to some Canadian inquirers: "Since this referendum law has been a part of our constitution, we have had no charter-mongers or railway speculators, no wild-cat schemes, submitted to our legislature. Formerly our time was occupied by speculative schemes of one kind or another, but since the referendum has been made a part of the constitution these people do not press their schemes on the legislature; hence, there is no necessity for having recourse to the referendum."

In Switzerland the people themselves propose, formulate,

and modify the law; they determine its relations with other nations, and have several times voted on the salaries, etc., of their foreign ministers. Their relations with other nations are always those of peace. Though in the midst of the armed camp of Europe, there is not a single man in the Swiss army. Every Swiss citizen is a member of his cantonal militia, and can be called out to defend his country, but the militia can never be used for offense. The result is that Switzerland is the only nation in Europe that is not staggering under the war tax, and she has a greater certainty of peace than her neighbors, because she has no foreign policy of mastership and domination. The people themselves do not desire it, but only to develop their own resources for themselves, and have good-will to others in doing the same. Her foreign policy has little history because it is one of good-will. The result is that the international postal service, international Red Cross, and various other international services are establishing headquarters in Switzerland, because less likely to be disturbed in a country that has no army than in one that has a large one, and more likely to get fair treatment in a true democracy than under other forms of government. This is done by the consent of the nations coöperating, and is a solid evidence of the peace, order, and purity of a true democracy, where the people actually have and really exercise the power of initiative and action.

With the initiative and referendum we have a government that is in its forms actually democratic.

Arena. 34: 234-40. September, 1905.

Direct Popular Legislation: The Chief Objections Examined. Charles Sumner Lobingier.

The attitude of expert and professional opinion has not, as a whole, been favorable to the extension of the Swiss referendum, while there are notable exceptions, eminent specialists in political science, as well as distinguished representatives of the bench and bar, have expressed themselves adversely to the system. Now that direct-legislation has ceased to be a mere hobby of the pro-

fessional agitator and theoretical reformer, is in actual operation in some states, and bids fair to become a live issue in others, and especially now that its constitutionality has been judicially affirmed, it ought to be of value to inquire into the reasons for this attitude on the part of those who are supposed to speak with authority, and to ascertain how far it results from mere conservatism and dislike of radical change and how far it is due to the actual demerits of the proposed system.

An examination of the literature of the subject will disclose that the chief objections urged by these opponents of the referendum may be reduced to four, *viz.*: (1) Indifference of electors; (2) complexity of legislation and incapacity of electors; (3) obliteration of distinction between constitutional and other law, and (4) impairment of legislative influence.

I.

Of these the first is the one most frequently and insistently urged. Even so moderate and impartial an observer as Albert Bushnell Hart says of the institution in its original home:

"I must own to disappointment over the use made by the Swiss of their envied opportunity. On the twenty referenda between 1879 and 1891, the average vote in proportion to the voters was but 58.5 per cent.; in only one case did it reach 67 per cent. and in one case—the patent law of 1887—it fell to about 40 per cent. in the Confederation and to 9 per cent. in the Canton Schwyz. On the serious and dangerous question of recognizing the right to employment, this present year, only about 56 per cent. participated. In Zurich there is a compulsory-voting law, of which the curious result is that on both national and cantonal referenda many thousands of blank ballots are cast. The result of the small vote is that laws duly considered by the national legislature, and passed by considerable majorities, are often reversed by a minority of the voters. The most probable reason for this apathy is that there are too many elections—in some cantons as many as fifteen a year. Whatever the cause, Swiss voters are less interested in referenda than Swiss legislators in framing bills."

So M. Deploige, a Belgian critic, who is none too friendly, declares of the referendum:

"It is a little ridiculous to talk of legislation by the people when more than one-half the citizens refuse to exercise their legislative rights."

But it seems not to have occurred to the opponents of direct-legislation that this line of argument would tell quite as strongly against a cherished American practice—the submission of constitutions to a popular vote. Judge Simeon E. Baldwin, speaking of a state where submission has been followed from the first, says:

"Experience shows that much less interest is taken by the people in propositions for constitutional amendments than in elections to office. The personal element is always wanting, and, generally, that of party advantage."

The strife between Hartford and New Haven for holding the state capital was of special interest to every citizen, and great efforts were made to call out a full vote on the part of each, yet a fifth of the electors who cast their ballots for state officers in 1873 cast none on the constitutional amendment. And the change to biennial elections, in 1884, was carried by little more than a fourth of those who took part in the general election, the total vote for state officers being considerably more than double that cast on the proposed amendment. The prohibition question has excited as much interest as any not connected with the immediate success of one of our great political parties, but at the decisive vote in 1889, only 72,746 ballots were cast, though those for governor, at the last preceding state election, numbered 154,226, out of a total registry of 167,529.

In 1887, out of a total electorate of over 31,000 in Delaware, less than one-half took the trouble to vote on the question of calling a convention. In 1891, when the voters appear to have increased to 35,000 there were still less than fifty per cent. who cast their ballots.

In Nebraska, in 1896, the electors were invited to vote on no less than twelve amendments to the constitution. The total vote for the office of governor in that year was 217,768, while on the very important amendment relating to the increase in

the number of supreme court judges, there are reported as having been cast only 122,475, or about 61 per cent. of those cast for gubernatorial candidates. Indeed, proposed amendments have been submitted in that state in all but two of the even years since 1881, and only one of these has been declared adopted.

Now the benefits of popular ratification form a subject on which there is a practical unanimity of opinion among the publicists of the present day. Professor Hart himself observes:

"In the United States we have already the good effects of the referendum, so far as it deals with changes of the constitutions, the permanent and superior part of our law."

Among these "good effects" are, it is generally conceded, the permanence of constitutions and the educational influence upon the electors—all this in spite of the fact that a large percentage apparently fails to exercise the privilege. It is difficult to understand why similar advantages might not accrue by applying the system to ordinary legislation.

Moreover, in some parts of the country, at least, the voters display a growing appreciation of their function as constitution-makers. Thus in California, during a period of a dozen years, in which some twenty-eight amendments were submitted, an average of about two-thirds of those voting at the election availed themselves of their right to pass upon these proposed changes in the fundamental law. On the question of extending the franchise to women, which was submitted at a presidential election, 83.4 per cent. of those voting for presidential candidates registered their choice, while the lowest constitutional vote during the period was 39.4 per cent., which was cast on an amendment to which there was little opposition. In Texas and other states of the South and West the figures reveal on the part of the electorate an increasing interest in constitution-making.

Even in the instances referred to above as indicating a different condition, there were qualifying circumstances. The Delaware, and at least one of the Connecticut, instances were special elections which hardly ever afforded a fair test of the voter's real interest. In Nebraska most of the rejected amendments received a majority of the votes cast thereon and were lost by reason only of the constitutional requirement of a majority of

all votes cast at the election. A light vote on constitutional amendments may also frequently be explained by the comparative unimportance of some, or, on the other hand, by the strong probability of their adoption on account of their general acceptance, or for some other reason.

But conceding that the electors do fail to take as much interest in abstract questions in the form of proposed constitutions and laws as in the election of candidates, does it follow that the system of direct popular action is a failure or that the state's interests would be promoted by discarding it?

"The lack of an absolutely full vote on any question," says Mr. Moffett, in the article above referred to, "is . . . not a disadvantage but the reverse. It means that only those who feel some interest in the subject, and are therefore prepared to act with a certain intelligence, take the trouble to vote, and that the members of the unintelligent residuum voluntarily disfranchise themselves."

It may be, and apparently is, true that more electors will go to the polls to vote for certain individuals for office than will exercise the higher privilege of determining the character of the state's laws. In other words, a personal and concrete subject arouses greater interest than an impersonal and abstract one. But it surely will not be claimed that those who vote simply for candidates and fail to vote on proposed laws are actuated by patriotic or even intelligent motives. We have seen that the framers of the first popularly-adopted American state constitution sought to make ours "a government of laws, not of men"; the voter who goes to the polls because, and merely because, he wishes one or more individuals elected to office and who ignores the opportunity to express his choice concerning the laws, must be deemed to be more interested in the fortunes of individuals than in the welfare of the state and to have failed to attain a high standard of good citizenship.

II.

M. Simon Deploige, in his objections to the referendum, declares:

"The elector who writes Aye or No on his ballot-paper performs an act, the apparent simplicity of which has attracted the democrats, but this act is, as a matter of fact, a very complex one. It requires that each voter should be able not only to understand why legislation is necessary, but also should be able to judge whether the law in question is adequate to meet the case. Nothing effectual has as yet been devised which would assist the elector in forming a personal opinion on such a subject."

But it may well be asked if this is not after all an indictment of popular government in general rather than merely of popular legislation, and whether as a matter of fact the people are not now, in the last analysis, required to determine these questions but to do so under a system which disguises and conceals the fact that they are involved? When the American electorate is called upon to choose a president or a congress, or when the British voter is asked to register his choice for members of parliament, the result usually determines the fate of important measures vitally affecting the national policy. But these are not the questions most discussed in the campaign before the people. Instead of simplifying the voter's task the present system too often complicates it by involving the merits of a question with others, like the personality of candidates, or the necessity of party success.

"It is often said," observes Mr. Lecky, who certainly cannot be suspected of any predilections toward democracy, "that there are large classes of questions on which such a popular opinion could be of little worth. To this I have no difficulty in subscribing. It is very doubtful whether a really popular vote would have ratified the Toleration Act in the seventeenth century, or the abolition of the capital punishment of witches in the eighteenth century, or Catholic Emancipation in the nineteenth century, or a crowd of other measures that might be enumerated. It is now, however, too late to urge such an argument. Democracy has been crowned king. The voice of the multitude is the ultimate court of appeal, and the right of independent judgment, which was once claimed for the members of parliament, is now almost wholly discarded. If the electorate is to judge policies, it is surely less likely to err if it judges them on a clear and

distinct issue. In such a case it is most likely to act independently and not at the dictation of party wire-pullers."

III.

Mr. A. Lawrence Lowell, in an elaborate article says:

"Our whole political system rests on the distinction between constitutional and other laws. The former are the solemn principles laid down by the people in its ultimate sovereignty; the latter are regulations made by its representatives within the limits of their authority, and the courts can hold unauthorized and void any act which exceeds those limits. The courts can do this because they are maintaining against the legislature the fundamental principles which the people themselves have determined to support, and they can do it only so long as the people feel that the Constitution is something more sacred and enduring than ordinary laws, something that derives its force from a higher authority. Now, if all laws received their sanction from a direct popular vote, this distinction would disappear. There would cease to be any reason for considering one law more sacred than another, and hence our courts would soon lose their power to pass upon the constitutionality of statutes."

But the referendum is not a system under which "all laws receive their sanction from a direct popular vote." Its adoption means not the abolition of the legislature but primarily the maintenance of a wholesome check thereon, and at most the providing of an alternative system. In Switzerland the bulk of legislation is still enacted by the representative body.

Moreover, there are those who would not consider it a serious calamity if our courts should lose some of "their power to pass upon the constitutionality of statutes." In this day when important and beneficial statutes are often annulled on purely technical grounds,—when inferior courts and even ministerial officers assume to pass upon the constitutionality of laws,—the adoption of a system which would necessarily check this tendency could hardly be regarded as an unmixed evil.

Finally it should not be overlooked that this objection is not peculiar to the referendum, but that it could be made and has been made in reference to popular constitution-making. Wood-

row Wilson declares that in our recent fundamental codes "the distinctions between constitutional and ordinary law hitherto recognized and valued, tend to be fatally obscured," and it is common to deplore the tendency of the framers of these instruments to encroach on the field of general legislation. But whether or not this tendency is as dangerous as is claimed, it seems unlikely to be prevented by keeping out the referendum.

IV.

Professor Dicey, speaking with reference to the British legislature, says:

"The referendum diminishes the importance of parliamentary debate and thereby detracts from the influence of parliament. That this must be so admits of no denial; a veto, whether it be exercised by a king or by an electorate, lessens the power of the legislature."

Mr. Bryce expresses the same thought when he says that direct popular legislation "tends to lower the authority and sense of responsibility in the legislature."

But the loss of legislative influence is already an accomplished fact.

"The American people," declares Professor Commons, "are fairly content with their executive and judicial departments of government, but they feel that their law-making bodies have painfully failed. This conviction pertains to all grades of legislatures, municipal, state and federal. The newspapers speak what the people feel; and judging therefrom it is popular to denounce aldermen, legislators and congressmen. When Congress is in session, the business interests are reported to be in agony until it adjourns. The cry that rises towards the end of a legislature's session is humiliating. . . . This demoralization of legislative bodies, these tendencies to restrict legislation, must be viewed as a profoundly alarming feature of American politics."

Nor are such expressions confined to the writers of one country.

"I do not think," says Mr. Lecky, "there is any single fact which is more evident to impartial observers than the declining

efficiency and the lowered character of parliamentary government. The evil is certainly not restricted to England. All over Europe, and, it may be added, in a great measure in the United States, complaints of the same kind may be heard. A growone of the most characteristic features of the closing years of ing distrust and contempt for representative bodies has been the nineteenth century. In most countries, as we have already seen, the parliamentary system means constantly shifting government, ruined finances, frequent military revolts, the systematic management of constituencies. In most countries it has proved singularly sterile in high talent. It seems to have fallen more and more under the control of men of an inferior stamp; of skilful talkers and intriguers; of sectional interests or small groups; and its hold upon the affection and respect of nations has visibly diminished."

Mr. Dicey writes in a similar vein.

"Faith in parliaments," he declares, "has undergone an eclipse; in proportion as the area of representative government has extended, so the moral authority and prestige of representative government has diminished. . . . The proposals for elaborate schemes of proportional representation, the denunciation of the party system by brilliant and weighty writers who express in language which few men can command sentiments which thousands of men entertain, all bear witness to the widespread distrust of representative systems under which it, occasionally at least, may happen that an elected parliament represents only the worst side of a great nation."

Even so conservative a writer as the late E. L. Godkin gives this testimony to the discredited plight of modern legislatures:

"At present, as far as one can see, the democratic world is filled with distrust and dislike of its parliaments, and submits to them only under the pressure of stern necessity. . . . They (democracies) seem to be getting tired of the representative system. In no country is it receiving the praises it received forty years ago. . . . There are signs of a strong disposition, which the Swiss have done much to stimulate,

to try the 'referendum' more frequently, on a larger scale, as a mode of enacting laws."

Indeed, instead of impairing the prestige of legislatures the referendum seems to offer the one means of saving what little of it still remains. Probably the one fact which has contributed more than any other to lower the tone and standing of legislative bodies is the presence and influence of the lobby. If important measures were subject to a reference to the people before attaining the finality of legislation the power and influence of the lobby would be greatly reduced, if not destroyed. Such, at least, has been the experience of South Dakota as declared by its chief executive.

These, then are the results of a somewhat extensive search for the opinions of those who are supposed to speak with authority in opposition to the referendum. The arguments advanced and the reasons given seem far from convincing. This is not saying that there are no sound objections to the referendum. But if that system is to be condemned by the masters of political science it would seem that they must do so upon other grounds than those commonly urged.

Arena. 36: 186-8. August, 1906.

Most Important Political Event of the Year.

The Portland Oregonian, the leading Republican daily of the state and one of the most influential dailies of the Pacific coast, in its issue of June 10th, said in the course of a discussion of the election that the different propositions "were studied" by the electorate "without factional prejudice and decided, we may fairly suppose, solely with reference to the public good." And the writer continues:

"It is one of the greatest merits of the initiative and referendum that it makes possible a clear separation between local and national issues. Under the older system, which still prevails in most of the states, the people could express their opinion upon such a matter as the Barlow road purchase only by their choice of legislators. In determining this choice,

numerous other questions necessarily played a part. Which party the candidate belonged to, how he stood on the local-option question, upon woman suffrage and many other matters, would all unite to confuse the mind of the voter and he could never express himself clearly, directly, and exclusively upon any particular point. The method of the initiative and referendum permits each voter to express his individual opinion upon every question standing entirely by itself and without admixture of personal or partisan bias. It absolutely separates the business department of legislation from the personal and partisan side. Suppose, for example, that a certain Republican voter was opposed to the Barlow road purchase, while the Republican candidate for the legislature from his district was in favor of it. Under the old system he could not vote for his opinion upon the matter of pure business without voting against his party. This was a real misfortune, and it greatly contributed to dishearten the common man with politics. It made politics seem to him a hopelessly complicated game—baffling, ineffectual, futile. It was all promise and no performance. Under the Oregon system the voter acts directly upon results. The individual citizen feels his manhood as he could not under the purely representative method."

Arena. 39: 131-41. February, 1908.

Direct-Vote System. William D. Mackenzie.

Within the past seventy-five years there has been developed in the United States a system of party conventions with party machines and bosses, which is extra-constitutional and extra-legal. Representative government under party control is a clumsy and ineffective system. In the party platforms there is no separation of issues, and the party machinery does not always work so that the popular will may be enacted into legislation. In the second place, the system easily adapts itself to corrupt practices. When a corporation is seeking special privileges at the public expense it is obviously impossible to attempt to bribe all the voters, but unfortunately it is often a comparatively in-

expensive process to buy up a majority of a city council or the leaders of a party convention. It is a notorious fact that party primaries and conventions are often manipulated by the creatures and agents of corporate interests, and that party machines and party bosses are often owned and controlled by trusts and other private interests who use them to obtain and hold special privileges for which the people are compelled to pay dearly. In this way city councils, state legislatures, and even courts of justice, are often converted into instruments of monopoly and extortion.

These conditions call for a remedy. In theory we have the best government in the world. In practice, since the rise of privileged interests operating through money-controlled machines, our public servants have frequently defeated the ends of good government and trampled on the rights of the people. The great majority of our judges and legislators are personally incorruptible; and yet predatory wealth and corporate greed have usually found a way to gain their ends and to maintain their privileges, while the people have looked on in dumb amazement and despair. In recent years there has been a great civic uprising against political corruption and trustocracy, but our legislative bodies, municipal, state, and national, have not readily responded to the popular demands for reform. What is needed is a system which will restore genuine representative government by making our legislative bodies directly responsive to the will of the majority.

The only system which meets this requirement is the initiative and referendum. The referendum is the submission of a measure by the legislature or other representative body, to the voters for approval or rejection. It is compulsory when all but emergency measures *must* be submitted, optional when submission *may* be demanded by a certain percentage (usually five per cent.) of the voters. The initiative provides that a certain percentage (usually five or eight) of the voters may propose measures, which are afterwards submitted to a direct ballot of the people. The referendum gives the people veto power only. The initiative gives them complete and direct legislative power so far as they choose to exercise it. The object in view is not

to abolish the representative system, but to substitute a guarded representative system for an irresponsible one.

The opponents of the initiative and the referendum claim that the people are not competent to pass upon intricate questions of public policy. From their viewpoint, the people should elect representatives to do their thinking for them. This conception is hostile to the principle of democracy, or the rule of the people, on which our government was founded. The representative system was intended to be an instrument for registering and enforcing the popular will. Every political party recognizes, at least in theory, that the people are competent to decide public questions for themselves, for each party adopts a platform of principles upon which its candidates stand and on which the party solicits the votes of the people.

When the individual citizen employs an architect, no one questions his right to instruct him on the general plan of the house to be built, and to except or reject the detailed plans which are afterwards worked out by the architect. In a legal case no one questions the right of the individual citizen to accept or reject the advice offered by his attorney. Is there any good reason why the citizens in their collective capacity should not have a similar right to suggest legislation to their representatives, and to accept or reject the legislative plans after they are worked out in detail? Your architect and your attorney are not your masters but your servants or agents. So your representatives in Congress, the state legislature or city council, should not be your rulers, as they are under present conditions, but your servants or agents.

The people may make some mistakes in voting directly on public measures, just as the average citizen may make mistakes in deciding upon the kind of house he wishes his architect to build for him, or in deciding to enter upon a legal suit; but in collective as well as in individual affairs, we learn wisdom through our mistakes. Better an occasional error of judgment with the chance to correct it, than blind submission to laws, however perfect, which are imposed from without. The experience of Switzerland has been that the people move very slowly in the exercise of their direct-legislative powers.

Contrary to common belief, the initiative and referendum make for a progressive conservatism rather than for a wild and headlong radicalism.

The exercise of political power when applied directly to separate and distinct questions of public policy cannot fail to exert a powerful educational influence on the voters. It tends not only to make them more intelligent, but also more patriotic and devoted to the public welfare. It is not necessary that the voters should all be political or economic experts. In intricate questions of public policy, the average citizen will naturally rely on the judgment of those who have made a special study of these problems. And he can safely do so after the initiative and referendum have removed the graft-motive from politics.

Admitting that some of the people are now incompetent to vote on important questions of public policy, the fact remains that the rule of the majority will tend to create those social conditions which will make for better manhood and womanhood. Machine-rule is always the rule of the privileged classes and the breeder of corruption and official faithlessness. The natural tendency of the people's rule will be to equalize and broaden opportunities, and thus to develop a higher grade of citizenship.

In national affairs no one expects that more than a few issues—those of the most vital importance—would be submitted to a referendum vote. The national congress would continue to legislate and would take final action on all emergency measures which for lack of time could not be referred for a direct vote of the people. It is safe to predict, however, that under the initiative and referendum some of the ancient and venerable issues of party politics would quickly disappear from the arena of debate, and their place would be taken by new issues growing out of the new social and economic conditions of our times. Under the initiative system the prohibition of the liquor traffic, the inheritance tax, the taxation of land values, the national ownership of railroads and telegraphs and other new issues would be submitted to a direct vote. If any or all of these measures were overwhelmingly defeated, they would probably be withdrawn for a time from the field of practical

politics. If, on any issue, the result proved to be close, it would naturally be submitted to another referendum vote as soon as the legal limitations would permit, but there is no reason to fear that the voters would have to give up shoemaking or farming or selling goods in order to settle the affairs of state.

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Referendum in Switzerland and in America.

Abbott Lawrence Lowell.

There is one feature of the referendum at the same time marked and disappointing, and that is the small size of the vote. A palpable illustration of this is furnished by the half-canton of Rural Basle, where the law requires, for the ratification of any measure by the people, not only that a majority of the votes cast shall be affirmative, but also that a majority of all the persons qualified shall take part. Now, in the twenty years from 1864 to 1884, the people voted on the one hundred and two laws, of which forty-eight were accepted and twenty-eight rejected, while twenty-six failed to be ratified owing to the absence of a majority of the citizens. This result is not due to any peculiar indifference on the part of the inhabitants of Rural Basle. It would be the same in any other canton, if the laws were similar. In Berne, for example, a majority of the citizens have taken part in only nine out of sixty-eight referenda, and up to 1888 one law alone had received a number of affirmative votes equal to the majority of all the qualified voters in the canton. The vote is, moreover, decidedly fuller at elections than at referenda. Even in the case of national laws, which excite a greater interest, on the average scarcely more than one-half the voters in the Confederation go to the polls. Popular voting in Switzerland furnishes, indeed, another illustration of the truth that under no form of government can the people as a whole really rule; for it shows that, with the most democratic system ever yet devised, the laws are made only by that portion of the community which takes a genuine interest in public affairs.

These statistics are dry, but they give us a very definite idea of the actual working of the referendum, and prepare the way for a more general consideration of its effects. Several very marked tendencies are observable in the treatment by the people of the various measures submitted to them. The first of these is a tendency to reject radical laws, especially those that are in any way extreme; for in both federal and cantonal matters the people have shown themselves more conservative than their representatives. Such a result was predicted from the beginning by a few shrewd statesmen, and urged as an objection to the introduction of the system. But no party would now be in favor of giving it up: not the Radicals, because they believe the referendum to be a necessary feature of true democracy; and least of all the Conservatives, because they like to see a drag on hasty legislation. To some extent, however, the parties have changed their opinions; for while the Radicals cannot propose to do away with the federal referendum, they are by means anxious for its extension; and whenever the reactionary party have suggested a compulsory referendum for all federal laws, they have objected, on the ground that in the hands of the Clericals it would be an instrument for impeding progress. Nor are such fears groundless; for it is clear that in Switzerland a measure cannot pass unless it is so thoroughly ripe that there is a good deal of agreement of opinion about it; and it is equally clear that the people are less willing than their representatives to try experiments in legislation. Labor laws, for instance, and other measures designed to improve the condition of the working classes, although commonly supposed to be very popular with the masses of the community, have not always prospered at the referendum. Examples of this may be taken from the industrial Canton of Zurich, where the people rejected a cantonal law reducing the hours of work in factories, and protecting women and children employed in them; where they voted against the federal factory law, and later refused to sanction a cantonal law providing for the compulsory insurance of workmen, and regulating their relations with their employers. But perhaps an illustration which will give to Americans most forcibly an idea of the conservative influence of the referendum

is to be found in the rejection by the people in Zurich of a law to give daughters an equal inheritance with sons in the estates of their parents.

The people show, further, a dislike of spending money which sometimes crops up in a way that is almost ludicrous, as, for example, when they rejected a bill to provide a secretary of legation at Washington. It is, indeed, a striking fact that the only two federal measures defeated at the referendum for several years have been bills which entailed expense. It may be remarked in connection with this that two of the cantons, Berne and Aargau, at one time carried the theory of the referendum so far as to submit to popular vote the budget, or general appropriation bill. The experiment was absurd, and had the natural result. The budget was several times rejected, and all government thereby made well-nigh impossible, until at last it was found absolutely necessary to withdraw the appropriations from popular control. The people might well be expected to object to such a loss of power, but in Berne, at least, they were induced to ratify the repeal by adding to it other provisions designed to make the measure more palatable. Some of the Swiss writers feel that such a tendency towards economy is a cause for reproach, an attempt to minimize it; but an American would naturally think it far preferable to that inclination to squander the public moneys which seems to be a besetting sin with democracies. The fact is, social conditions are comparatively equal in Switzerland, owing to the absence of great cities with an enormous proletariat class, which does not feel the weight of the public burdens, nor realize that an increase of taxation affects its own comfort and prosperity.

How far the referendum diminishes the sense of responsibility of the deputies it is not easy to say. This is a matter of opinion which cannot be measured by statistics, and hence the answer must depend a great deal on the predisposition of the person who makes it. We should naturally expect a representative to feel less responsibility where his action is not final, and his decision is reviewed by his constitutents; and this would appear to be the case to some extent in Switzerland, at least where the referendum is compulsory. An eminent lawyer in

Berne once told the writer that the members of the cantonal legislature would vote for a measure they did not approve, relying on the people to reject it; and that he had known men to vote for a law in the great council, and against it at the polls. But this gentlemen belonged to a party which was in a hopeless minority, and was, in fact, decidedly out of sympathy with current politics. The truth seems to be that the sense of responsibility is diminished somewhat, but not enough to impair perceptibly the efficiency and conscientiousness of the representatives. It is generally believed that a good many members of the legislature of Massachusetts voted for the prohibitory amendment to the constitution, some years ago, when they did not approve of it, because they wanted to get the question out of the way, and knew that the people would not ratify it. But it would be absurd to found a general charge of levity against the representatives of the commonwealth on such a ground.

Perhaps the most important effect of the referendum is its influence on the development of parties. In purely representative democracies, election is the sole political act of the people, who retain no direct control over their representatives. Now, an election under these conditions is in reality only a choice between two or more rival candidates or rival parties, to one of which the destinies of the country must be committed; and hence the parties and their opinions are extremely important. But in Switzerland, where the people vote upon each measure separately, there is not such necessity of choosing between the programmes of opposing parties and of accepting one of them in its entirety. The referendum, therefore, deprives political programmes of much of their significance by allowing the people to elect a representative, and then reject any of his measures that they do not like. As a rule, indeed, each law submitted to popular vote is considered on its own merits, with comparatively little regard to the party with which it originated, or any other matters that may come before the people at the same time. The referendum tends, in short, to split up political issues, and thus to prevent the people from passing judgment at one stroke on the whole policy of the party in power. Its effect is, therefore, precisely the opposite of that of a general

election in this country, where, although some one issue may be particularly prominent, the decision of the people is not confined to that issue, but comprehends the broader question which of the two great parties had better, on the whole, be entrusted with power. For this reason a general election helps to consolidate and strengthen the parties. But the referendum entails a decision only on the special measure under consideration; and hence the people of Switzerland are never called upon, either at an election or a referendum, to judge the conduct of a party as a whole. It is no doubt largely on this account that Swiss political parties have no very definite programmes and little organization. Now, we have seen that the Swiss are in the habit of constantly reëlecting the same deputies, although they may reject a large part of their measures, and what is true of the individual is also true of the party. Both enjoy great permanence of tenure; and a study of Swiss history shows that since the general introduction of the referendum there has been a very marked increase in the stability of political parties.

Again, the referendum tends to draw attention to measures, and away from men; and it is the personal admiration or dislike of public men that forms a great deal of the fibre of party allegiance. So marked is this result in Switzerland that a president of the Confederation once said, that if one were to question ten Swiss, all of them would know whether their country was well governed or not, but nine of them would not be able to tell the name of the president, and the tenth, who might think he knew, would be mistaken. After allowing largely for exaggeration in the remark, one feels impelled to wonder how party leaders can be expected to thrive in such a land.

The referendum is not the only institution to which democracy has given rise in Switzerland. Far more extraordinary, though much less valuable, is the initiative. The referendum merely gives the people power to veto laws passed by their representatives, and has therefore a purely negative effect; but the Swiss have a strong feeling that democracy is not complete unless the people have also a right to propose laws directly, and the initiative is intended to supply this deficiency. It is a

device by which a certain number of citizens can demand a popular vote upon a measure in which they are interested, in spite of the refusal of the legislature to adopt their views. The federal constitution contains a recent provision of this kind, whereby any fifty thousand qualified voters may propose a specific amendment to the consititution, and require the matter to be submitted to the people.

The new procedure has already been used once, but the result has not been such as to encourage much hope of its usefulness as a means of progress. The required number of citizens demanded last year an amendment forbidding the slaughter of animals by bleeding. This was not done for the sake of preventing cruelty, although some of the voters were no doubt influenced by that consideration. The movement was really aimed at the Jews, who are forbidden by their religion to eat meat killed in the ordinary way; the true motive being made evident by the fact that at the final vote the heaviest affirmative majorities were given in those districts where the Jews had made considerable settlements. The federal assembly urged the rejection of the measure, and ordinances passed with the same object in a couple of the cantons had already been set aside by the federal council as inconsistent with the principles of religious liberty guaranteed by the national constitution; but in spite of the advice of their representatives the majority both of the people and of the cantons voted in favor of the amendment, thus placing Switzerland among the countries that oppress the Jews; and this by a species of petty persecution unworthy of an enlightened community.

The initiative is not likely to be put in operation with success often enough to produce any marked influence on the politics of the Confederation, for it has not been found effective, even for ordinary laws, in the cantons where it has long existed. In order to understand how small is its practical value we can turn to the great democratic canton of Zurich, where five thousand voters can propose a law, and require it to be submitted to the people. From 1869, when the initiative was first established, through 1885, a period for which very careful statistics have been compiled, there were eighteen measures proposed in this way.

Four of them were approved by a majority of the council and of these, two were ratified by the people, and two rejected; in one other case the council proposed a substitute, which was adopted; while of the remaining thirteen proposals, which were disapproved by the council, only three were enacted by the people. Of these three, one established cantonal houses of correction for tramps, a measure considered of doubtful expediency. Another reëstablished the death penalty, which had previously been given up; but the people shortly afterwards rejected the statute which provided for carrying it into effect, and the matter was dropped. The third abolished compulsory vaccination. The net direct result of the initiative in Zurich during sixteen or seventeen years was, therefore, the enactment of only three laws which the regular legislature was unwilling to pass; and of these, one was of doubtful value, about another the people seen to have changed their minds, and the third was distinctly pernicious. In the other cantons the initiative has been very rarely used.

Even the advocates of the initiative in Switzerland admit that as yet it has not developed much efficiency, but they hope that with the perfecting of democracy it will become more useful. The experience of the past, however, does not warrant us in believing that it will play any great part among the institutions of the future. It must always be worked against the opposition of the existing legislature, and, what is more important, it gives no room for compromise and mutual concession between different opinions, which is the very essence of legislation. Hence the chance of enacting any measure in this way must always be extremely small. The conception is a bold one, and the idea of direct popular legislation is attractive; but in practice the machinery is at best too imperfect to be of any real value to mankind, if indeed it is not liable to be a source of harm in the hands of extremists and fanatics.

After studying any successful institution in a foreign land, one is always moved to ask how it would work in one's own country; whether it could be grafted into the native system and made to thrive equally well there. Could we adopt the referendum in America? Would it produce the same fruits here as in its native soil? Is it consistent with our form of government?

I think not. It is to be noticed that we have long had a referendum for constitutional questions; but our whole political system rests on the distinction between constitutional and other laws. The former are the solemn principles laid down by the people in its ultimate sovereignty; the latter are regulations made by its representatives within the limits of their authority, and the courts can hold unauthorized and void any act which exceeds those limits. The courts can do this because they are maintaining against the legislature the fundamental principles which the people themselves have determined to support, and they can do it only so long as the people feel that the constitution is something more sacred and enduring than ordinary laws, something that derives its force from a higher authority. Now, if all laws received their sanction from a direct popular vote, this distinction would disappear. There would cease to be any reason for considering one law more sacred than another; and hence our courts would soon lose their power to pass upon the constitutionality of statutes. The courts have in general no such power in Switzerland, where indeed the distinction between constitutional and other laws is not so clearly marked as in America. With the destruction of this keystone of our government the checks and balances of our system would crumble, and the spirit of our institutions would be radically changed. The referendum as applied to ordinary statutes is, therefore, inconsistent with our polity, and could not be engrafted upon it without altering its very nature.

Moreover, the referendum is contrary to our ideas, our habits, and our traditions, and hence could not be expected to work successfully. We are accustomed to depute all ordinary legislation to our representatives, and to charge them with the duty and responsibility of making the laws. Our people are not in the habit of weighing the merits of particular statutes, or of debating the necessity for the various appropriations. Their experience has been confined to passing judgment upon men and upon general lines of policy. But the reverse of all this is true in Switzerland, where the historical traditions are strongly the other way. It is not, indeed, too much to say that the Swiss had a strictly representative form of government

only for a very short period and were never fully satisfied with it.

There is also a practical objection to the introduction of the referendum here, arising from the elaborate nature of our laws. The relations of the executive and legislative in Switzerland are very different from what they are in this country, for a great deal of what we should consider legislation falls into the province of the Swiss executive. The laws are passed in a comparatively simple and general form, and the executive has authority to complete their details and provide for their application by means of decrees or ordinances. Partly for this reason, and partly on account of the small size of the country, the number of laws passed in a year is far less than with us. Thus, in the canton of Zurich, where all laws and all large appropriations require a popular vote, the number of questions submitted to the people in a year, including federal matters, averages less than ten, while in the canton of Berne it has averaged only about four. If now we turn to the statutes of Massachusetts, we shall find that the legislature of that state passed last year five hundred and ninety-five separate acts and resolves. It is impossible to say how many of the appropriations included in this list would have required a popular vote, if the commonwealth had had a referendum similar to that of Zurich; but any estimate, however, moderate, of the number of acts and resolves to be submitted to the people will demonstrate the impracticability of the scheme. Let us call it four hundred. Is it not evident that while a people may vote intelligently on five or ten laws in a year, it is absurd to suppose that they could vote intelligently on four hundred. How could they be expected to consider independently each one of four hundred different measures? Is it not clear what they would do? They would not attempt to consider each law separately, nor even to understand it at all, but they would vote on them all as their party leaders directed; and hence we should have a mere parody of the Swiss referendum—a system which would produce a result exactly the opposite of what we have observed to be the case in Switzerland; for our state

legislation would be far more a matter of party lines and party politics than it is today.

A general referendum in the compulsory form is, therefore, entirely out of the question in America; and even in the milder or facultative form it would be likely to do us more harm than good, for it would probably be used only in the case of laws that had aroused a good deal of party feeling, and had been carried as party measures. In such cases, the necessary signatures to the demand for a popular vote could easily be collected by means of the party machinery, without which the task would be extremely difficult. In all probability, therefore, the referendum would be used almost exclusively as a method of harassing the party in power by delaying legislation, and would become a mere party weapon instead of a cause of the mitigation of party strife. It is, indeed, important to remember that while the referendum in Switzerland has undoubtedly contributed to the absence of party government, its successful working depends no less certainly on the low development of party spirit; and as in the United States we cannot hope to abolish parties, or even to diminish their activity to any great extent, the conditions are not present under which the referendum can be expected to succeed.

Moreover, there is not the same need of a referendum here that there is in Switzerland. The institution is essentially a limitation on democracy, and is really a means of vetoing the acts of the legislature. Now, the Swiss have no executive veto, no judicial process for setting aside unconstitutional laws, and in the cantons only a single chamber. Hence they are exposed to much more danger of hasty legislation than we are, and have greater need of a veto in the hands of the people. It is the mission of Switzerland to try experiments in popular government for the benefit of the rest of the world, but it does not follow that everything she has found successful can be profitably adopted by other nations, or will bear the same fruit in another soil.

More accurately stated, however, the question in America is not whether we shall adopt the referendum, but whether we

shall adopt it in the Swiss form; for the institution already exists here, and, having developed spontaneously, has probably assumed the form best suited to the nature of our government. Its principal application is in constitutional questions; but the tendency, especially in the newer states of the west, is in the direction of making the constitutions more and more elaborate and inclusive, so that they cover a great deal of the ground formerly within the province of the legislature. The result is that the range of subjects controlled by direct popular vote has been very much enlarged. This tendency has perhaps been carried too far; for, as Mr. Oberholzer remarks in his valuable book on the referendum in America, "if a constitution is to enter into the details of government, and trespass on those fields of action before reserved to the legislature, it cannot have the character of permanence which it had when it was only an outline to direct the legislature. It must change as laws change, and laws must change as the needs of the people change." But while the increasing scope of the constitutions may render them less immutable, it does not tend to obliterate the distinction between constitutional and other laws. The extension of the referendum by this means involves, therefore, no danger to the fundamental principles of our system.

The sanction of a popular vote has, it is true, been required in many of the states for other things than constitutional amendment; but if we leave out local affairs, we shall find that the matters so treated are closely akin to constitutional questions, and are of such a nature that, except for some obvious motive of necessity or convenience, they would be regulated by the constitution itself. The power of the legislature to contract debts, for example, is often limited, with a proviso that any excess above the limit must be approved by the people. The object of this provision is evident. A necessity for exceeding the debt limit may easily arise, and yet it would clearly be absurd to insist on a formal amendment to the constitution on each occasion. It is far more appropriate to require for an exception to the constitutional rule a simple authority from the people who sanctioned the constitution. A similar procedure is established in some states for the alienation of public

property, for the levy of certain taxes, and even for the expenditure of money for a specified purpose above a fixed amount. All these cases clearly depend upon the same principle, that of providing a convenient way of making the necessary exceptions to a general rule laid down in the constitution. Another provision to be found in all the new states and in some of the older ones, declares that the capital shall be selected by a vote of the people, and shall not be changed without their consent. Now, as the seat of government is, naturally and properly, fixed by the constitution itself, such a provision merely establishes an informal method of completing or amending that instrument. The same thing is even more evidently true of provisions authorizing the legislature to submit to the people the question of woman suffrage or of proportional representation.

These examples substantially include all the cases where a constitution allows a measure to be submitted to the people of the state, with one notable exception. About 1848, when the excitement over wild banking schemes was raging in the west, several states adopted a provision requiring a popular vote upon every act creating banks. This provision differs materially from all the others we have considered, and comes far nearer to the Swiss referendum. It is hardly within the domain of constitutional law; and instead of involving only a simple question about which the mass of the people can easily form an opinion, it presents to them a complex piece of legislation, whose details cannot be understood without a great deal of study. Curiously enough, the provision has scarcely been copied at all, but has been almost entirely confined to the states which suffered from the banking mania at that time,—a fact which seems to prove that it is not in harmony with our institutions.

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Decline of Legislatures. E. L. Godkin.

More and more, it is said, the work of governments is falling into the hands of men to whom even small pay is important, and who are suspected of adding to their income by cor-

ruption. The withdrawal of the more intelligent class from legislative duties is more and more lamented, and the complaint is somewhat justified by the mass of crude, hasty, incoherent, and unnecessary laws which are poured on the world at every session. It is increasingly difficult today to get a man of serious knowledge on any subject to go to Congress, if he have other pursuits and other sources of income. To get him to go to the state legislature, in any of the populous and busy states, is well-nigh impossible. If he has tried the experiment once, and is unwilling to repeat it, and you ask him why, he will answer that the secret committee work was repulsive; that the silence and the inability to accomplish anything, imposed on him by the rules, were disheartening; and that the difficulty of communicating with his constituents, or with the nation at large, through the spoken and reported word, deprived him of all prospects of being rewarded by celebrity.

It is into the vacancies thus left that the boss steps with full hands. He summons from every quarter needy young men, and helps them to get into places where they will be able to add to their pay by some sort of corruption, however disguised, —perhaps rarely direct bribery, but too often blackmail or a share in jobs; to whom it is not necessary that the legislature should be an agreeable place, so long as it promises a livelihood. This system is already working actively in some states; it is spreading to others, and is more perceptible in the great centers of affairs. It is an abuse, too, which in a measure creates what it feeds upon. The more legislatures are filled with bad characters, the less inducement there is for men of a superior order to enter them; for it is true of every sort of public service, from the army up to the cabinet, that men are influenced as to entering it by the kind of company they will have to keep. The statesman will not associate with the boy, if he can help it, especially in a work in which conference and persuasion play a large part.

No effect of this passage of legislative work into less instructed hands is more curious than the great stimulus it has given to legislation itself. Legislators now, apparently, would fain have the field of legislation as wide as it was in the middle

ages. The schemes for the regulation of life by law, which are daily submitted to the committees by aspiring reformers, are innumerable. One legislator in Kansas was seeking all last winter to procure the enactment of the ten commandments. In Nebraska, another has sought to legislate against the wearing of corsets by women. Constant efforts are made to limit the prices of things, to impose fresh duties on common carriers, to restrain the growth of wealth, to promote patriotic feeling by greater use of symbols, or in some manner to improve public morals by artificial restraints. There is no legislature in America which does not contain members anxious to right some kind of wrong, or afford some sort of aid to human character, by a bill. Sometimes the bill is introduced to oblige a constituent, in full confidence that it will never leave the committe room; at others, to rectify some abuse or misconduct which happens to have come under the legislator's eye. Sometimes, again, the greater activity of one member drives into legislation another who had previously looked forward to a silent session. "The laurels of Miltiades will not let him sleep." Then it has to be borne in mind that, under the committee system, which has been faithfully copied from Congress in all the legislatures, the only way in which a member can make his constituents aware that he is trying to earn his salary is by introducing bills. It does not much matter that they are not finished pieces of legislation, or that there is but little chance of their passage. Their main object is to convince the district that its representative is awake and active, and has an eye to its interests. The practice of "log-rolling," too, has become a fixed feature in the procedure of nearly all the legislatures; that is, of making one member's support of another member's bill conditional on his receiving the other member's support for his own. In the attempted revolt against the boss, during the recent senatorial election in New York, a good many members who avowed their sense of Platt's unfitness for the Senate acknowledged that they could not vote against him openly, because this would cause the defeat of local measures in which they were interested. This recalls the fact that many even of the best men go to the legislature for one or two

terms, not so much to serve the public as to secure the passage of bills in which they, or the voters of their district, have a special concern. Their anxiety about these makes their subserviency to the majority complete, on larger questions, however it is controlled. You vote for an obviously unfit man for senator, for instance, because you cannot risk the success of the bill for putting up a building, or erecting a bridge, or opening a new street, in your own town. You must give and take. These men are reinforced by a large number by whom the service is rendered for simple livelihood. The spoils doctrine—that public office is a prize, or a "plum" rather than a public trust—has effected a considerable lodgment in legislation. Not all receive their places as the Massachusetts farmer received his membership in the legislature, a few years ago, because he had lost some cows by lightning, but a formidable number—young lawyers, farmers carrying heavy mortgages, men without regular occupation and temporarily out of a job—find service in the legislature, even for one term, an attractive mode of tiding over the winter.

At present, as far as one can see, the democratic world is filled with distrust and dislike of its parliaments, and submits to them only under the pressure of stern necessity. The alternative appears to be a dictatorship, but probably the world will not see another dictator chosen for centuries, if ever. Democracies do not admit that this is an alternative, nor do they admit that legislatures, such as we see them, are the last thing they have to try. They seem to be getting tired of the representative system. In no country is it receiving the praises it received forty years ago. There are signs of a strong disposition, which the Swiss have done much to stimulate, to try the "referendum" more frequently, on a larger scale, as a mode of enacting laws. One of the faults most commonly found in the legislatures, as I have already said, is the fault of doing too much. I do not think I exaggerate in saying that all the busier states in America in which most capital is concentrated and most industry carried on, witness every meeting of the state legislature with anxiety and alarm. I have never heard such a meeting wished for or called for by a serious

man outside the political class. It creates undisguised fear of some sort of interference with industry, some sort of legislation for the benefit of one class, or the trial of some hazardous experiment in judicial or administrative procedure, or in public education or taxation. There is no legislature today which is controlled by scientific methods, or by the opinion of experts in jurisprudence or political economy. Measures devised by such men are apt to be passed with exceeding difficulty, while the law is rendered more and more uncertain by the enormous number of acts passed on all sorts of subjects.

Nearly every state has taken a step towards meeting this danger by confining the meeting of its legislature to every second year. It has said, in other words, that it must have less legislation. In no case that I have heard of has the opposition to this change come from any class except the one that is engaged in the working of political machinery; that is, in the nomination or election of candidates and the filling of places. The rest of the community, as a rule, hails it with delight. People are beginning to ask themselves why legislatures should meet even every second year; why once in five years would not be enough. An examination of any state statute-book discloses the fact that necessary legislation is a rare thing; that the communities in our day seldom need a new law; and that most laws are passed without due consideration, and before the need of them has been made known either by popular agitation or by the demand of experts. It would not be an exaggeration to say that nine-tenths of our modern state legislation will do no good, and that at least one-tenth of it will do positive harm. If half the stories told about state legislatures be true, a very large proportion of the members meet, not with plans for the public good, but with plans either for the promotion of their personal interests or for procuring money for party uses or places for party agents.

The constitutional convention is as conspicuous an example of successful government as the state legislatures are of failure. If we can learn anything from the history of these bodies, it is that if the meetings of the legislature were much rarer, say once in five or ten years, we should secure a higher order of

talent and character for its membership and more careful deliberation for its measures, and should greatly reduce the number of the latter. But we can go further, and say that inasmuch as all important matter devised by the convention is submitted to the people with eminent success, there is no reason why all grave measures of ordinary legislation should not be submitted also. In other words, the referendum is not confined to Switzerland. We have it among us already. All, or nearly all our state constitutions are the product of a referendum. The number of important measures with which the legislature feels chary about dealing, which are brought before the people by its direction, increases every year. Upon the question of the location of the state capital and of some state institutions, of the expenditure of public money, of the establishment of banks, of the maintenance or sale of canals, of leasing public lands, of taxation beyond a certain amount, of the prohibition of the liquor traffic, of the extension of the suffrage, and upon several other subjects, a popular vote is often taken in various states.

In short, there is no discussion of the question of legislatures in which either great restriction in the number or length of their sessions, or the remission of a greatly increased number of subjects to treatment by the popular vote, does not appear as a favorite remedy for their abuses and shortcomings. If we may judge by these signs, the representative system, after a century of existence, under a very extended suffrage, has failed to satisfy the expectations of its earlier promoters, and is likely to make way in its turn for the more direct action of the people on the most important questions of government, and a much-diminished demand for all legislation whatever. This, at all events, is the only remedy now in sight, which is much talked about or is considered worthy of serious attention.

Atlantic Monthly. 97: 792-6. June, 1906.

Constitution-Mending and the Initiative. Frank Foxcroft.

One provision of the law enacted by the Oregon legislature in 1903, to make effective the initiative-referendum amendment,

and to regulate elections under it, deserves all praise. Manifestly, if laws are to be enacted and state constitutions amended in this helter-skelter fashion, with all discussion by legislatures eliminated, it is important that some means should be taken to insure the enlightenment of voters regarding the measures upon which they are called to vote. Something may be done through public meetings, and something through the newspapers. But not all voters can be induced to attend public meetings, and not all habitually read the newspapers. In any political campaign in any state, any political party would be glad to be assured of an opportunity to place an argument in favor of its principles in the hands of every voter. Precisely this opportunity is afforded under the act of the Oregon legislature. Not less than three months before an election at which any proposed law or amendment is to be submitted to the people, the secretary of state is required to cause to be printed a true copy of the title and text of each measure to be submitted, with its number and the form in which the question will be printed on the official ballot. The persons, committees, or duly authorized officers of any organization filing any petition for the initiative are given the right to place with the secretary of state, at least five months before the election, any pamphlet advocating such measure. Also, not less than four months before the election, any person, committee, or organization opposing any measure is given the right to place with the secretary of state for distribution pamphlets presenting arguments against the proposition. There are minute directions as to the size of the pamphlet pages, the size and form of type, and even the quality and weight of the paper; but if these conditions are complied with, and enough pamphlets are furnished to admit of giving one to every registered voter of the state, the law becomes mandatory upon the secretary of state. It is directed that he "shall cause one copy of each of said pamphlets to be bound in with his copy of the measures to be submitted as herein provided." Nothing is left to the discretion or caprice of the secretary. The persons or committees interested in the pending propositions furnish their arguments, pro or con, suitably printed in sufficient number at their own

cost, and the state does the rest. The pamphlets are distributed by the secretary of state to the county clerks, and by them to the registration officers, and it is made the duty of these officers, without additional compensation for the service, to give one of the pamphlets to every voter when he registers. In a state like Oregon, of comparatively sparse and scattered population, it is a great thing to be assured that every voter called upon to vote upon a proposed law or amendment shall have in his possession weeks before the vote is taken arguments carefully prepared by those most interested, setting forth the reasons for and against the proposition. Even with these provisions, a certain advantage necessarily remains with those who propose the measure; for the organization necessary to enable them to secure the requisite number of signers to their petitions makes it easier for them—under ordinary circumstances—than for their opponents to prepare a pamphlet, and to meet the cost of printing more than one hundred thousand copies of it to place in the hands of the secretary of state. It is quite conceivable that the negative side might sometimes go by default, and the voters be furnished only with arguments for the affirmative. But this, at least, has not been the case as regards the pending question. The perplexed Oregon voter, called upon by passionate appeals to enfranchise the women of the state, was given by his registration officer a pamphlet of five pages urging upon him the demands of the women who want the ballot, and with it a pamphlet fully as earnest, and more than three times as long, presenting the case of those women, professing to speak for the majority of their sex, who not only do not want the ballot, but entreat men not to thrust it upon them, on the ground that to do so "would not only be an injustice to women, but would lessen their influence for good, and would imperil the community." The pamphlet in the affirmative is presented by the Oregon Equal Suffrage Association. that in the negative by the Oregon State Association Opposed to the Extension of Suffrage to Women. Such a contrast and comparison of opposing views is at least educational, even if bewildering.

One obvious defect of the initiative is the absence of all

supervision, or "editing," of proposals. They may be crudely drawn, they may be mutually conflicting, but the measures proposed must be sent to the people in precisely the form in which they are filed. The proposals to be voted on in Oregon this month afford no less than three instances of such confusion. The Willamette Development League proposes a bill to tax the gross earnings of telephone, telegraph, and express companies. The Grange proposes a similar bill. But in the first bill the tax is fixed at two per cent upon telegraph and express companies, and at one per cent upon telephone companies; while the other bill places it at three and two per cent respectively. What if both bills are adopted? The Development, again, proposes a bill for levying a tax upon sleeping, dining, palace, oil, and refrigerator cars; the Grange proposes an altogether different method of levying such a tax. There is a wild conflict of opinion among lawyers as to the consequences if both bills should be adopted; and it is an open question whether the companies would not be compelled to pay a double tax. A third instance of direct conflict is found in two constitutional amendments, one proposed by the People's Power League, which puts the state printing wholly in the hands of the legislature, and one filed by the typographical unions, which makes the office a constitutional one, forbids all letting out of contracts, and looks to the ownership of a printing plant by the state. Confusion worse confounded would follow the adoption of both proposals.

In some quarters, it is treated as a kind of treason to popular government to express doubt of the wisdom of such proposals. "Cannot the people be trusted?" it is asked. Doubtless they can. But it is for the interest of the people that proposals for new laws, and, still more, for changes in the fundamental law, should be scrutinized, sifted, and debated before they are put upon the statute-books or incorporated in constitutions. Under our system of government, no real demand of the majority of the people can go long unsatisfied. What the people really want, sooner or later they will get. But they will be no worse off if the concession of their demands is deferred long enough to allow time to consider wheth-

er the thing that is offered is really the thing that they want. If existing processes for the amendment of constitutions are slow and sometimes disappointing, they are at least safer than a system which allows only four months' time for so radical a change as that proposed in Oregon. Half unwittingly, we are drifting upon conditions which threaten revolutionary changes in our institutions. At the risk of whatever odium, conservative-minded folk should pull themselves together and inquire whether the time to resist these changes is not at the beginning rather than later on. If the extension of the initiative may not be checked, the provision for its exercise may at least be safeguarded, and its operation may be made more orderly and deliberate.

Chautauquan. 13: 29-34. April, 1891.

Referendum in Switzerland. J. W. Sullivan.

With such opportunities for creating change, are the Swiss continually demanding something new? Do they write laws one day and wipe them out the next? Are they ever in a ferment over absurd or radical propositions? Is there consequently a reactionary party in Switzerland? In other words, can the people, or, rather, the Swiss people, be trusted—entirely?

The reply can be framed in a sentence: The records show, first, the frequency with which, whenever they have had the opportunity, the people have had recourse to the referendum, and, second, the tenacity with which they have clung to the conservative customs of the republic.

Regular and constant, in ancient and modern times, has been the resort to the referendum wherever it has been practiced. In the fifty-five years from 1469 to 1524, the citizens of Berne took sixty referendary votes. Of 113 federal laws and decrees subject to the referendum passed up to the close of 1886 under the constitution of 1874, nineteen were challenged by the necessary 30,000 petitioners, thirteen being rejected and six accepted.

As to the conservativeness of the Swiss voter, the evidence is emphatic. In 1862 and again in 1878, the Canton of Geneva rejected proposed changes in its constitution, on the latter occasion by a majority of 6,000 in a vote of 11,000. Twice since 1847 the same canton has voted against an increase of official salaries, and lately it has declined to reduce the number of its executive councilors from seven to five. The experience of the Federation has been similar. Between 1874 and 1880 five measures recommended by the federal executive and passed by the federal assembly were vetoed by a national vote. In 1880 a proposed change in the issue of bank notes was rejected by a majority of 134,000. The two French cantons of Geneva and Neuchâtel, entering the Federation in the present century, have adopted the referendum on the avowed ground of its efficiency as a check to hasty and inconsiderate legislation.

The nation, however, shows no stupid aversion to change. In 1872 a constitutional revision was rejected by a majority of 6.000. But the present constitution was adopted two years later by a majority of 142,000. Nor does the popular vote point to local selfishness. Especially was this shown in 1878 in the vote taken on the St. Gothard subsidy. The appropriation, besides putting a heavy strain on national resources, threatened the interests of several of the mountain cantons. But on a stormy day in midwinter half a million voters went to the polls, and two-thirds of them wanted the tunnel, the affirmative vote in the imperiled cantons being quite up to the average.

Of late years the movement has been steady toward the general adoption of the referendum. In 1860 but 34 per cent. of the Swiss possessed it in cantonal affairs, 66 per cent. delegating their sovereign rights to representatives. In 1870 the referendariship had risen to 71 per cent., but 29 submitting to law-making officials. The proportions are now about 90 per cent. to 10.

The movement is not only toward the referendum, but to its obligatory form. The practice of the optional form has revealed defects in it which are inherent.

Geneva's management of the optional cantonal referendum

is typical. The constitution provides that, with certain exceptions, the people, after petition, may sanction or reject not only the laws passed by the grand council, but the decrees issued by the legislative and executive powers. The exceptions are "measures of urgence" and the items of the annual budget excepting such as establish a new tax, increase one in force, or necessitate an issue of bonds. The referendum cannot be exercised against the budget as a whole, the grand council indicating the sections which are to go to the public vote. In case of opposition to any measure, a petition for the referendum is put in circulation. It must receive the signatures of at least 3,500 citizens—about one in six of the cantonal vote—within thirty days after the publication of the proposed measure. After this period—known as "the first delay"—the vote, if the petition has been successful, must take place within forty days—"the second delay."

The power of declaring measures to be "of urgence" lies with the grand council, the body passing the measures. Small wonder, then, that many bills are, in its eyes, of too much and too immediate importance to go to the people. "The habit," protested Grand Councillor M. Putet, on one occasion, "tends more and more to introduce itself here of decreeing urgence unnecessarily, thus taking away from the referendum expenses which have nothing of urgence. This is contrary to the spirit of the constitutional law. Public necessity alone can authorize the grand council to take away any of its acts from the public control."

Another defect in the optional referendum is that it can be transformed into a partisan weapon—in Switzerland, as elsewhere, there being politicians ready to take advantage of the law for party purposes. For instance, a minority party in the Geneva grand council, seeking some concession from a majority which have just passed a bill, will threaten, if the concession demanded is not granted, to agitate for the referendum on the bill; this although perhaps the minority favor the measure, some of them, indeed, perhaps, having voted for it. As the majority may not be certain of the outcome of a struggle

at the polls, they will be inclined to deliver what the minority demand.

But the most serious objections to the optional form arise in connection with the petitioning. Easy enough for a rich and strong party to bear the expense of printing, mailing, and circulating the blank lists; in case of opposition coming from the poorer classes the cost may prove an insurmountable obstacle. Especially it is difficult to get up a petition after several successive appeals coming close together, the constant agitation growing tiresome as well as financially burdensome. Hence, measures sometimes have become law simply because the people have not had time to recover from the prolonged agitation in connection with preceding propositions. And each measure submitted to the optional referendum brings with it two separate waves of popular discussion. On this point, ex-President Numa Droz [drō] has said: "The agitation which takes place while collecting the necessary signatures, nearly always attended with strong feeling, diverts the mind from the object of the law, perverts in advance public opinion, and, not permitting later the calm discussion of the measure proposed, establishes an almost irresistible current toward rejection." Finally, a fact as notorious in Switzerland as vote-buying in America, a large number of citizens who are hostile to a proposed law may fear to record their opinion by signing a referendum list. Their signatures may be seen, and the unveiling of their sentiments brings jeopardy to their means of making a living.

Zurich furnishes the examples of the cantons having the obligatory referendum. There the law provides: 1. That all laws, decrees, and changes in the constitution must be submitted to the people. 2. That all decisions of the grand council on existing law must be voted on. 3. That the grand council may submit decisions which it itself proposes to make. Besides the voting on a whole law, the council may ask a vote on a special point. The grand council cannot put in force provisionally any law or decree. The propositions must be sent to the voters at least thirty days before the voting. The regular referendary ballotings take place twice a year, spring and

autumn. In urgent cases, the grand council may call for a special election.

In effect, the obligatory referendum makes of the entire citizenship a deliberative body in perpetual session. Formerly, its adversaries made much of the argument that it was ever calling the voters to the urns. This is now avoided by the semi-annual elections. It was once feared that the voters would vote party tickets without regard to the merits of the various measures. But it has been proved beyond doubt that the fate of one proposition has no effect on that of another decided at the same time. Zurich has pronounced on ninety-one laws in twenty-eight elections, the votes indicating surprising independence of judgment. When the obligatory form was proposed for Zurich, its friends were able to point with certainty to the fact that it would be a sure instrument, but the argument that it might prove a costly one they could not refute without experiment. Now they have the data to show that taxes are lower than ever, those for police, for example, being only about half those of optional Geneva, a less populous canton. To the prophets who foresaw endless partisan strife in case the referendum was to be called in force on every measure, Zurich has replied by reducing partisanship to the lowest point, its people indifferent to parties since an honest vote of the whole body of citizens is to be the unquestionable issue of every question.

The sentiment is strong in Switzerland that there is but one way to reform the government and keep it reformed. It is for the people themselves to take the direction of their public affairs at every step. The exercise of popular rights extended and simplified—this the remedy. With the government mechanism void unless approved by the citizenship, rogues might get into office, but in vain; at their direction nothing would be done. Deprived of the law-making power, representatives are no longer rulers, and it is then they may be expected to seek the common benefit.

Advanced Swiss opinion declares, "Let us trust—ourselves." To be explicit, the friends of the perfected referendum—the obligatory form—embracing a large body of the Swiss people, are demanding that its sphere shall be enlarged. They hope to

see the referendary right exercised completely in all public matters—in commune, city, canton, and nation. There is an element with even greater hopes. It sees in the pathway of the referendum the road leading to the regeneration of society. It believes the unobstructed will of the people will push on to the settlement of every radical question. Already this will is engaging itself with the problem of monopoly—in banking, in trade, in the land. These issues settled and the law of justice becoming the law of custom, the time will come, these reformers hold, when repressive statutes shall no longer be necessary. The concepts of a perfect and symmetrical justice imbibed by the young, as our own rising generation is now imbibing the sentiment that our chattel slavery was horrible, government by force will no longer be known and men will dwell in concord. This the dream of dreamers who believe the universal reign of peace is the destiny of man, to be achieved by man. Theirs is the faith that clings to a millennium.

Are they idle dreamers? Observe what already the referendum, imperfect as it is, has done in Switzerland. In all parts it has scotched the politician; in some, it has buried him. It has without fail reduced taxation wherever applied, in some places by a half. It has made the poor man's vote a practical right, elections being held on Sunday. It has caused the laws to be expressed in plain language, to the impoverishment of legal word-splitters. It has brought about a remarkable purification of the press, slander campaigns being unknown, since principles are everything to the voters, office-holders comparatively nothing. It holds its army democratic, there being no aristocracy of commissioned officers and the military academies open to all. It has made the public services—the post-office, the railroads— the equal of private enterprises in efficiency. It is death to the one-man power, there being in Switzerland no mayor to a city, no governor to a canton, and no president —no king president, such as ours—to the federation. Above all, it has rendered vicious or reactionary legislation impossible, nearly every law being the direct expression of an honest people.

Contemporary Review. 67: 328-44. March, 1895.

Referendum in Switzerland. Numa Droz.

It is generally agreed in Switzerland that the popular initiative, as it is now established by the federal constitution, might at any time place the country in very considerable danger. From the moment that the regular representatives of the people are placed in such a position that they have no more say in the matter than an irresponsible committee drawing up articles in a bar parlour, it is clear that the limits of sound democracy have been passed, and that the reign of demagogy has begun. The people have no other safeguard than their own good sense. The good sense of the Swiss people is certainly very great; but who is to guarantee us against moments of sudden excitement or of unreflecting passion, when the bounds of reason and justice may again be overstepped, as in the case of the Jewish slaughterhouse regulations? The shaping of a wise constitution must always be a matter of weighing and balancing; it cannot be permitted that the gravest decisions should be the work of impulse or surprise. The generally adopted system of two chambers, and of two or three readings for every bill before it passes into law, is in itself a recognition of this fact. But the demagogue is impatient of all these obstacles; he wants a single chamber and deliberation by steam. It cannot be denied that the Swiss people have shown a want of wisdom in adopting a system of initiative which places all our institutions at the mercy of any daring attempt instigated by the demagogue and favoured by precisely such circumstances as should rather incline us to take time for reflection.

Contemporary Review. 99: 11-9. January, 1911.

Initiative-Referendum in the United States. Frank Foxcroft.

It is characteristic of the American to be in a hurry. The short cut,—in business, in education, in politics, in legislation, —is attractive to him. He grows easily weary of slow-moving processes even when the results which they work out are in

the main good. He will hasten their operations, if he can; or if not, he will substitute others for them.

It is to this trait, in part, that the recent development of the initiative-referendum in the United States is due. To enact a proposition into law through the ordinary legislative processes, to have it referred to a committee, carefully phrased and recast, reported upon and debated, passed through three or four stages, first in one house and then in another, and finally subjected to a possible executive veto, requiring the work to be done over again, is a tedious and uncertain proceeding. How much simpler it is to frame the proposition just as one wants it to read, secure for it the hasty approval of a small percentage of the voters, and cast it directly at the people, to be accepted or rejected as it stands.

But, aside from this national inclination to do things in a hurry, there is another influence which has strengthened the movement toward direct popular legislation. This is the feeling that legislators are too easily succeptible to selfish and corrupting influences. The evil word "graft" is comparatively new in American politics; and the evil thing for which it stands, although not new, has grown to disquieting proportions as large business and corporate interests have become more and more unscrupulous in the means which they employ to shape legislation. It is not strange that direct popular participation in legislation should be urged as a remedy for such abuses. The people are honest. The people cannot be bought. Paid "lobbyists" who buttonhole legislators, control the appointment of committees, assist in the writing of reports, and ingeniously insert or drop a word here and there in a pending Bill, up to the very stage of engrossment, cannot, it is argued, corrupt the whole electorate. The people can be trusted. So doubtless they can. But whether it is better for them to take the work of legislating into their own hands, or to exert their power by retiring dishonest legislators to private life and electing honest men in their places, is another question. In the long run, under institutions so free as those which exist in the United States, the people can get what they want; and if they allow corrupt and corrupting forces to remain long

dominant in any city or state, the root of the trouble is in their criminal indifference rather than in the avarice of law-makers or the machinations of a lobby.

Under the Constitution of the United States large liberty is left to the several states to regulate their own concerns. Certain powers are expressly delegated to the Federal Government, but it is provided that all powers not so delegated and not prohibited to the states by the Federal Constitution shall be reserved to the states respectively or to the people. Even so fundamental a matter as the conditions of the suffrage,—except that under the Fifteenth Amendment it is forbidden to abridge the right of citizens to vote on account of race, colour or previous condition of servitude,—is left to the regulation of the several states. Under this order of things, there has come to pass the singular anomaly that in five states women are permitted to vote on equal terms with men, not only for state and local officials, but for representatives in Congress and for President, making it possible that, in a close election, the national choice for President might actually be determined by their votes; while in the other forty-one states only men have the full suffrage. State legislatures frame laws for the states. State constitutions are amended ordinarily, and until a recent date invariably, at the initiative of the legislatures, and uusually through the concurrent action of two successive legislatures. Except in one state, Delaware, such amendments have required the approval of a majority of the voters of the state to become valid.

This process of the ratification of proposed amendments to state constitutions is, of course, a form of referendum. Another familiar form is the submission to the popular approval, at the polls, of some particular bit of legislation, regarding which a legislature may wish to obtain the sanction of the people. The application of the referendum in these ways is no novelty. The new thing is the initiative, under which law-making or constitution-mending begins with the people, and the legislature is either wholly ignored or acts under compulsion.

Certain forms of the initiative, so mild that they need not be considered at length, are the "public opinion" plan established in Illinois, and the "advisory" initiative and referendum adopted in Texas and Delaware. Under the former plan 10 per cent. of the registered voters of the state may file a petition asking that a certain question be submitted to the voters for an expression of their opinion upon it. But as legislators are quite free to disregard this expression of opinion if they please, and in a number of instances have done so, this device has little practical effect. The "advisory" initiative in Texas allows 10 per cent. of the voters of any party to secure a direct party vote upon both candidates and policies. In Delaware a form of the "advisory" initiative and referendum has been adopted under an expression of opinion obtained at the polls in 1906.

During the last ten years, eight states—South Dakota, Utah, Oregon, Nevada, Montana, Oklahoma, Missouri and Maine—have adopted constitutional provisions for the initiative and referendum, and in a ninth, North Dakota, a similar proposition is on its way to submission to the popular vote, having passed one legislature and being required to pass a second before it is submitted for ratification at the polls. It is to be observed, that of these states, all but Maine are in the West, where all political institutions are relatively new and public opinion takes more kindly to innovations. In Utah the system has not been put into operation for lack of necessary supplemental legislation to give its provisions force. In Nevada, the system is inoperative because the proposal was passed by two successive legislatures on its way to the people in forms varying so widely as to fail to meet the constitutional requirements. In Montana, the system went into full effect in 1907, but has not yet been subjected to a practical test. Oklahoma became a state on July 4, 1908, and the elaborate and radical initiative-referendum provisions which were incorporated in its constitution were tested for the first time on November 8, 1910. In Missouri and Maine amendments providing for the initiative-referendum were ratified by the people at the elections in the fall of 1908. South Dakota and Oregon are the

only two states in which the practical workings of the system may be studied.

South Dakota was the first state, by an amendment to the state constitution adopted in 1898, to apply the initiative and referendum to all legislation. The amendment provided that "The legislative power of the state shall be vested in a legislature, which shall consist of a senate and house of representatives, except that the people expressly reserve to themselves the right to propose measures, which measures the legislatures shall enact and submit to a vote of the electors of the state; and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, or the support of the state government and its existing public institutions." The supreme court of South Dakota has construed this last clause to mean that a legislative act which is passed with an "emergency clause" is thereby exempt from the requirement of a referendum. It would therefore be possible for a legislature, by the incorporation of an emergency clause in any pending measure, to avoid an expression of the popular will regarding it; but it would be likely to go hard with a legislature which trifled with the popular rights in this fashion.

All that is required to set the initiative-referendum in motion in South Dakota is a petition signed by five per cent. of the electors of the state, and it is expressly provided that the veto power of the government shall not apply to measures which are presented and enacted in this way. One possible result of the South Dakota system was probably not foreseen by the legislature which framed the initiative-referendum amendment, namely, that a really good and needed law might be "held up" for a considerable period by a demand for a referendum upon it. This is what actually happened with a law enacted by the legislature in 1907 to diminish the scandal of easy divorces from which the good name of the state had long suffered, by increasing from six months to one year the period of residence within the state required of persons applying for a divorce. The di-

vorce business was so profitable that it was not difficult to get the signatures of the required five per cent. of the voters to a petition for a referendum; and the law passed early in 1907 was accordingly suspended until the people, at the election in November, 1908, gave their sanction to it.

In South Dakota, as in Montana, and as in Maine, by the amendment adopted in 1908 the initiative-referendum is not applied to amendments of the state constitution. Oregon is the only state thus far which has actually amended its fundamental law by the swift and easy process of the initiative-referendum without consideration by the legislature; and the first occasion on which it was done was at the election in June, 1906. At that election five proposed amendments of the constitution were submitted; and at the election in June, 1908, ten. Under the system which prevailed in Oregon prior to 1902 it required about four years to amend the constitution; now it can be done in four months.

One obvious objection to the intiative-referendum is the crude form which measures thus submitted are likely to take. It is no easy matter so to frame a measure for enactment that it shall exactly define the things which it is intended to command or prohibit. In any American legislature the measure which finally goes upon the statute-book usually varies widely from the proposal first introduced. Every phrase is discussed and weighed with reference not only to what it conveys, but to its effect upon existing laws. Even after all pains are taken, weak points disclose themselves when the law is put in force, and a considerable part of the work of any given legislature consists in amending the laws enacted by its predecessors. But the initiative-referendum leaves no chance for the discussion of words. A group of enthusiasts knocks together a proposal to its liking, hurries round and gets the required number of signatures,—and nothing is easier than to get signatures to almost anything which does not involve personal pecuniary responsibility,—and the proposal must go upon the ballot in the form in which it is framed by its promoters. In one or two states this difficulty is partly met by an arrangement under which measures proposed under the intiative go to the

legislature for consideration, and the legislature is empowered to submit together with the original an alternative form, which the people may adopt if they please; but in Oregon, where the system is being given its fullest test, there is no such arrangement for tempering the crudity of direct popular legislation. An illustration of the sort of thing which is possible under this haphazard process is the "anti-pass" law in Oregon. A Bill covering this subject was submitted to the people at the election in 1906, and was adopted by a vote of more than three to one. Yet it was so imperfectly drawn that, under its provisions, a railroad was forbidden to issue passes to its own employees, but might issue them to the employees of other railroads. Happily this blunder was neutralised by a still more amusing error,—the failure to prefix an enacting clause. This made the Bill inoperative; and the legislature took the matter up and framed a suitable law to effect the object after which the people, through the initiative, were blindly struggling.

Another obvious objection to the initiative-referendum is the possibility that there may be presented at the same election, through different groups of voters, conflicting proposals, and that both may be adopted. The election of 1908 in Oregon furnishes a case in point. The salmon fisheries of the Columbia river are of great importance. The interests of the lower-river fishermen and those of the upper-river fishermen clash. The lower-river fishermen proposed an Act to abolish all the gear of the upper-river fishermen. This the people adopted by a large majority. The upper-river fishermen proposed a law limiting the length of seines and abolishing fishing in the navigable channels of the lower river and stopping fishing at night in all other portions of the river. This also the people adopted. And now that each of these conflicting interests has had its whack at the other in the adoption of these laws, it remains for the legislature to regulate somehow the two interests and give to each a fair chance.

These possibilities of the adoption of crude and conflicting laws are not, however, the most serious objections to the initiative-referendum. They might be guarded against,—although, as a matter of fact, they have not been,—by some pro-

vision for a revision and editing of the propositions filed for submission to the people. Perhaps the office of the secretary of state might be used for that purpose, since it is there that the responsibility now rests for carrying out the details of the system. But if these difficulties could be removed, other and more serious objections would remain. The system gives no chance for adequate discussion. When a Bill is before a legislature, under the right of petition and with the opportunity afforded for public hearings, there is a chance for the presentation of arguments pro and con. The hearings and debates and the discussions in the press inform the public as to what is going on, and the reasons for it. In the case of proposed amendments to the fundamental law, the interval of time between the sessions of the legislatures, which must act upon pending proposals before they are submitted to the people, affords an opportunity to consider the proposals in all their bearings; and in the light given by expressions of public opinion the second legislature may reject a proposal which has found favour with the first. But under the initiative-referendum, as exemplified in Oregon, four months, as has been said, suffice for the whole process, from the filing of the petition to the adoption of an amendment which goes into effect immediately. This headlong process cuts off debate and makes against intelligent action. So far as it is applied this system strikes at representative government. Except in "town meetings," in which the citizens of small communities vote directly upon questions of local administration, it has been the American practice to entrust all the powers of government to representatives elected for that purpose and exercising authority delegated to them by the people. But in the initiative-referendum, the people take the work of legislating and constitution-mending into their own untrained hands and ignore or over-ride the legislators whom they have elected to represent them. Incidentally the sense of responsibility on the part of legislators is weakened, for it becomes easy to shift responsibility from legislatures to the people; and the more responsibility is diffused the less keen is the sense of it.

It is to be observed, too, that under this system the conserv-

atives are always at a disadvantage. The dice are loaded against them. The various radical groups, the socialists, the single-taxers, the woman suffragists and the rest will sign each other's petitions and get their different propositions before the people. When the campaign opens the radicals are already organised. They know what they want, and they will co-operate energetically to secure it. But the conservatives are handicapped. It is always harder to organize the negative than the affirmative. And if the conservatives defeat destructive changes in the fundamental law at one election, they cannot rest upon their arms. They must be continually upon guard, for at the very next election the same battle may have to be fought over again.

It is deplorable that so many American voters are indifferent to their political responsibilities even as to the choice of parties and candidates. Even at exciting elections it is rare that more than eighty per cent, of the registered voters go to the polls. In "off" years, when no great issue stirs the public mind, the ratio of voters often drops to sixty and even to fifty per cent. of the registration. It is a remarkable fact that, at the presidential election in 1904, the total vote was nearly half a million less than in 1900, in spite of the increase in the population during the interval. But if voters are indifferent,—many of them,—to questions of parties and candidates, they are much more indifferent with reference to proposals of legislation or of constitutional amendment which are submitted to them. Rarely do so many as three out of four voters who vote for candidates at an election record themselves upon proposed laws or amendments submitted to them at the same time; usually less than one-half of them do so, and sometimes not more than one-fifth. The adoption of such proposals is, therefore, often the work of a minority of the voters, and sometimes of a small minority.

Conservative Americans may congratulate themselves that the initiative-referendum has not been extended to national legislation. As to the Federal Constitution, its application there is practically impossible. The framers of that instrument laid the foundations of the government strong and deep;

and they guarded the Constitution against sudden and impulsive changes so effectually that, with the exception of the amendments which were made as a result of the Civil War, it has stood unaltered for more than a hundred years.

Cosmopolitan. 15: 329-33. July, 1893.

Swiss Referendum, the Ideal Republican Government.
William D. McCrackan.

It is interesting to notice how truly the objections made by the opponents of the referendum confirm the claims of its partisans. At the present time this institution is being warmly discussed in Belgium. The king has even pronounced himself in favor of a royal referendum to cover certain subjects of legislation. In view of the interest manifested in that country a M. Simon Deploige, took pains to examine the working of the sysem in Switzerland. He came to the conclusion (Le Referendum en Suisse, Bruxelles, 1892), that it would not do for Belgium, and on the whole seemed to question its success even in the land of its origin.

Some of his criticisms are at least suggestive. He advances the common argument that the people at large are not competent to judge of complex legislative questions. This objection springs from the monarchical conception that government officials are public masters, not servants. It overlooks the fundamental principle of democracy, that the people constitute the only repository of political power. Democracy must stand or fall by that dictum. In reality the capacity of a people to govern themselves need not even be considered. All men have the right to self-government, whether they do it well or ill.

Mr. Bryce realizes the advantages of the referendum when he says: "Nor should it be forgotten that in a country where law depends for its force on the consent of the government, it is eminently desirable that law should not outrun popular sentiment, but have the whole weight of the people's deliverance behind it." If the people cannot discriminate properly it only proves that legislative questions ought to be simplified, and the

innumerable complex side issues obliterated. Deploige cites colonial enterprises to illustrate his objection. "The people," he says, "only see the immediate outlay in men and money and cannot appreciate the ultimate gain in foreign possessions." The truth is, the people know too well that they pay the bills and a few adventurers reap the harvest. No greater tribute to the wisdom of the masses could be given than is implied in this censure. The referendum acts as an educational thermometer to guage the popular political education.

But the dignity and power of parliaments would be compromised! Say rather, their squabbles and tyrannies would be checked. Voters are anxious to distinguish between men and measures. *The world is tired of parties, whose business it is to oppose and obstruct each other at all hazards, in wordy sham battles.* There is a demand for business methods in making laws. Certainly the Swiss federal assembly and the cantonal councils have lost none of their weight since the introduction of the referendum.

Some timid souls fear that the gates would be thrown open to transient or revolutionary measures. The experience of Switzerland proves that the referendum forbids the piling up of laws, and acts as a drag on hasty legislation. Out of nineteen federal bills so far referred to the popular verdict, only six were accepted, while thirteen were rejected. Others urge that right of public meeting and the privilege of communicating directly with representatives ought to suffice. But these good people must be well aware that such methods are effective only when the representatives can be persuaded that they will fail of reelection, unless they comply with the wishes expressed.

Perhaps the most reasonable objection which can be made to the referendum is that the press would, after all, dictate the popular verdict; that enterprising corruptionists could still buy it up, and great corporations rule the country. In the first place, it must be said that Switzerland has not suffered from this cause, and, besides, the venality of the press is essentially an economic evil which cannot be cured until the monopolistic privileges of great corporations are abolished. The referendum

is a reform in political machinery solely. It is not a cure-all; but it will help the people to reach down to those fundamental problems which must be solved if the world is to progress.

There may still be some intelligent men who are satisfied with the working of representative government in the United States. But they cannot realize its inconsistencies and abuses. In state and federal legislatures, representatives are elected by a fraction only of the people, the unsuccessful voters being as completely disfranchised as though they were actually deprived of their ballots. Practically, therefore, our representative system belies its very name—it does not represent. Some plan of proportional representation is urgently needed to correct this primary fault. But even with this improvement made, the people have no guarantee that obnoxious legislation will not be forced upon them. Once elected, representatives have a free hand; there is no way of calling them to account, until their terms are over and the harm is done.

In truth there must be a return to first principles, to purer forms and straightforward methods.

Given a small body of freemen, how will they naturally proceed to govern themselves? They will unconsciously imitate the Swiss Landsgemeinde or the New England town-meeting. Briefly stated, they will meet at fixed times to settle matters of common interest, to elect officers from their number, commissioned to carry out the laws they may pass, and to draw up a set of rules, or a constitution. In some races the instinct for self-government is more strongly developed than in others. In the United States men invariably organize on this principle, whether they propose to found a settlement, a farmer's alliance, or a boat club.

The chances are that a body of freemen will continue to govern themselves in this manner, until population and territory have increased so much that it becomes a physical impossibility for them to meet personally. Then direct democracy gives place to a representative system of government. The people cease to exercise their sovereign rights in person, they are gradually weaned from self-government, and the professional politician makes his appearance.

This is the critical moment in the history of every democracy. The people, having once surrendered direct government, almost always become the prey of party bosses. The referendum alone is capable of restoring to them that personal exercise of political rights which is the heritage of freemen.

If there is anyone whom the practical politician professes to despise, and invariably dreads, it is the man who treats legislation seriously—as a science. He calls him a theorist, a college professor, and other bad names. And yet, when all is said and done, even our happy-go-lucky methods of making laws must rest upon some scientific basis. As it was reserved for modern students to discover that political economy had definite laws of its own, so it is the duty of the present generation to determine the rules which govern the science of legislation.

The principle of the referendum is by no means a novelty in the United States. Constitutional amendments are referred to popular vote in every state of the Union except Delaware. "Local option" is in itself a form of referendum. Throughout the country there are many examples in counties, cities, townships and school districts. The other day the voters of Somerville, a suburb of Boston, met in a general assembly to consider the question of annexation to that city. It was a perfectly legal city town-meeting, and an application of pure democracy to municipal methods. What is needed now is to harmonize these various forms, to increase their efficiency, and widen their applicability. It would be wise to select some one state perhaps, in order to develop the referendum within its jurisdiction in a systematic manner, according to the best tenets of legislative science.

Several state supreme courts have already asserted the competence of legislatures to refer laws to the electors. A rider might be attached to any state bill, specifying that it should not go into effect until the people had voted upon it. In this manner federal legislation itself might be submitted to the referendum. Great measures, affecting the whole Union, could not be passed unless they were approved by at least a majority of the citizens.

The rapidity with which this question of the referendum has

forced itself into public notice is truly astonishing. Five years ago its very name was unknown in this country. By degrees, a few newspaper and magazine articles began to describe its working in Switzerland; today it is a plank in the platform of every association for political reform. And, in truth, to adopt the referendum would be merely to live up to our professions. This country masquerades as a democracy. In fact, it is a political nondescript; for more than one radical reform must be accomplished before this pretense can be turned into reality. The referendum is an expression of that modern world-tendency which strives to assure to every individual those rights we justly call inalienable.

Edinburgh Review. 171: 135-45. January, 1890.

Democracy in Switzerland.

The referendum is open to two grave objections. The first objection is that the reference of parliamentary legislation to a popular vote is, on the face of the matter, a reference from the judgment of the instructed to the opinon of the uninstructed—from knowledge to ignorance. A legislature must be worse constituted than is the federal assembly if it does not contain members whose education and intellectual capacity are far higher than the education and the intelligence of the ordinary elector. It is *a priori* improbable that the judgment of the Swiss people should be sounder than the judgment of the Swiss people's chosen representatives. If a popular vote be needed to correct the errors of a parliament, the natural inference is, not that the electors are specially wise, but that the parliament is specially foolish. If in Switzerland the referendum be a public benefit, this fact will suggest to most Englishmen that the Swiss federal assembly is badly chosen. The *a priori* conclusion that the people are not so wise as their parliamentary representatives, is it may be suggested, confirmed by the historical experience of England. Parliament supported "revolution principles" when a popular vote would have restored the Stuarts. The Septennial Act

saved England from a reaction. The reform of the calendar, the gradual spread of religious toleration, Catholic emancipation, are events each of which marks a step in the path of progress taken by the wisdom of Parliament in opposition to the prejudices of the English people. Even today the referendum might in England be fatal to the maintenance of wise sanitary legislation.

The second objection is that the referendum undermines the influence of the legislature. The partial truth of this assertion admits of no denial. An assembly, the decisions whereof are liable to reversal, cannot possess the authority of a sovereign parliament, and debates which are indecisive lose their importance. Where, as in Switzerland, a parliamentary vote be overriden by a popular veto, parliamentary debates cannot be carried on with the same energy or vivacity as in France or in England. It is vain to suppose that you can possess at the same time inconsistent advantages. England has at times gained much from the sovereignty of Parliament. Switzerland may derive considerable benefit from the direct participation of the Swiss people in federal legislation. But it is impossible to combine all the advantages of parliamentary government, as it exists in England, with all the advantages of fully developed popular government as it exists in Switzerland. If the authority of Parliament must be maintained at the highest possible point, then Parliament must be supreme, and the decrees of Parliament must be final. If, on the other hand, it be desirable that the people should act as legislators, then the authority of Parliament, and with it the importance of parliamentary debates, must suffer diminution. This becomes clear as day if we recur to the analogy between the referendum and the veto. To revive the obsolete prerogative of the Crown would be of necessity to diminish the weight of Parliament. When Elizabeth rejected more than half the bills which had been passed by the Houses, statesmen thought more of convincing or conciliating the Queen than of securing the approval of a parliamentary majority. Discussion in the closet was more important than debate in the House of Commons. Whether the veto be pronounced by the Crown or by the

people, the effect must in one respect be the same. Parliamenary statesmanship is discouraged, and statesmen court, not the representative assembly, but the sovereign king or the sovereign democracy.

Hampton's. 26: 459-72. April, 1911.

Oregon: Most Complete Democracy in the World.
Frederick C. Howe.

I doubt if any legislature in the country, possibly in the world, can show as substantial a record of progressive legislation as that of the people of Oregon, in four years' time. Nor is there anything revolutionary about these measures. They fairly reflect the opinion of the average man on the streets of any state in the Union.

Direct legislation was subjected to its severest test in 1910, when thirty-two measures, covering the greatest variety of questions, were submitted to popular verdict. It was generally believed the people could not discriminate between so many measures, some of them in conflict and a considerable number involving expert knowledge of taxation, legal procedure, education and industrial conditions.

Of these measures nine were approved and twenty-three defeated, many of the latter by decisive majorities.

Fifteen of the measures were put forward by local interests for the division of counties, for normal schools and asylums. These were generally defeated as was the woman's suffrage amendment and the resolution for a constitutional convention.

Popular Taxation Legislation.

Two amendments to the constitution dealing with taxation were defeated while a third, which abolished poll taxes and gave the people of each county the right to regulate taxation and exemptions within its limts, was approved. Here was another instance of the underlying democracy, of the self-confidence, of the spirit of liberty that has shone through all of the popular legislation. The people were willing that the

voters in each locality should tax themselves as they willed, that they should experiment with things they presumably knew the most about and out of the experiments discover something of value for the rest of them.

The approval of this amendment by the people was the more remarkable because its avowed motive was the taxation of land values, or the Single Tax. Farmers are supposed to be unalterably opposed to the exemption of improvements and personal property from taxation and the collection of state and local taxes from the land alone. But western Canada had tried this experiment, and it had been so effective in stimulating improvements that the contagion of example had spread across the border. Then, too, Oregon is afflicted with land and railway monopolists, and the taxation of land values offered a flank attack upon those who refuse either to sell to settlers or improve their holdings. Under the amendment each county can levy its taxes as it will. In this respect it is sovereign. If the railroads and the land monopolists want to bottle up a county and hold the land for speculative prices, the county has it in its power to make them pay for their "bottling."

The same confidence in local self-government was shown in the approval of a measure permitting cities to regulate, control, or prohibit as they will the sale of intoxicating liquors, which many temperance reformers have sought in vain from the state legislatures.

By a conclusive majority the people decided that workmen engaged in hazardous pursuits must be protected, and that the judge-made defenses of "fellow servants," "assumption of risk" and "contributory negligence" should be modified, while machinery and appliances dangerous to workmen must be inspected, protected and inclosed. For years the labor unions had tried to get such a measure through the Assembly, but big business interests had always defeated it.

A great advance in legal procedure was made by another of the people's laws. After repeated disappointments from the legislature the labor unions initiated a measure to put an end to the harassing delays and costly appeals in civil litigation.

For the unanimous verdict of a jury the people substituted a three fourths verdict. By this change the plaintiff is given a more nearly equal chance with the defendant before the jury. It is not necessary for him to secure the unanimous agreement of twelve men before he can recover. This prevents the deadlocking of juries by one man possibly in the employ of, or in sympathy with, some great corporation.

The same measure greatly simplified procedure. It directed the supreme court to enter judgment in a civil suit, if from all the testimony presented it was evident to the superior court that the verdict in the trial court was a just one. In other states irrelevant testimony which may not affect the merits of the case in any way, but which has been erroneously admitted in evidence by the lower court, invalidates the whole procedure and makes it necessary to send the case back to the lower court for retrial.

The law also provided that superior courts should affirm the judgment of the lower courts if there was any evidence whatever before the jury to support the verdict as found. These reforms make it difficult for corporation attorneys to wear out a litigant, especially the poor claimant for injuries suffered in employment, by repeated appeals, reversals and retrials, due to some immaterial error.

Lawyers, bar associations and legal reformers have urged for generations that the law be simplified, be opened to all alike, in fact as well as in theory. It remained for Oregon, for the people of Oregon, to cut this Gordian knot and open up the administration of justice to rich and poor on something like equal terms.

At this same election the people carried popular government one step farther on. They decided to take a hand in the nomination of candidates for the Presidency. Delegates to national conventions are free to cast their votes as they will. They are not instructed by the voters and are responsible to no one but themselves. Too often are they influenced or controlled by privileged interests, by hope of place or Federal patronage. The party in power is controlled by patronage and the office holding class, while the lack of organization leaves

the minority party the prey of any interest powerful enough to control it.

Senator Bourne presented a plan to the voters of Oregon for securing the direct expression of the popular will in making nominations for President and Vice President. The measure was proposed by initiative petition. It provides that delegates to national conventions shall be chosen at the primaries while, at the same time, the people may express their preference upon the primary ballot for candidates offering themselves for President and Vice President.

By this measure Oregon extended the people's rule to the White House. Every official, from constable to delegate to the national convention is now responsive and responsible to the popular will.

Independent. 53: 329-30. February 7, 1901.

Referendum.

As a rule, less than one-half of the people of a state are found to vote on constitutional amendments, and when a change has to be approved by a majority of all the electors and not merely of those voting, it is practically impossible to secure its approval. It is not too much to say that the most ridiculous results attend these attempts at legislation by the people. As Mr. Oberholzer shows by a multitude of instances, the mass of the people have no will to declare on subjects which they are incompetent to understand, while those who cast their votes do so in a manner which indicates in most cases either indifference or ignorance. It would be hardly possible to name an important constitutional change which can be fairly said to manifest the deliberate will of an enlightened popular majority.

On this point Mr. Oberholzer sums up the result of his laborious and exhaustive analysis as follows:

"So far as our experience has already gone in the United States, a number of glaring defects have been exhibited by the people in their role as law-makers. The most impressive of these is their strange apathy, even in the face of great issues. They, as a mass, have so little interest in legislative subjects that only a small percentage will attend the polls for special

elections, and at general elections, when individual candidates are to be chosen, tho the propositions be printed on the same ballots with the names of the candidates, a large proportion of the voters will not put themselves to the slight trouble of placing a pencil mark under the word 'yes' or 'no'."

The conclusion is unavoidable that the people, considered as a body, do not know anything, nor do they care anything, about the merits or demerits of a particular law. They may know little in the opinion of most of us about the respective merits of candidates for representative offices. For one reason or another, however, the people still have enough interest in this subject to record their preferences. It is true that the largest possible vote is never polled for candidates, but, speaking roughly, twice as many electors vote for individuals as vote for measures. Furthermore, very strange popular idiosyncrasies are developed at elections on propositions. When several are submitted at the same time all are likely to be defeated, or else all adopted. There seems to be little capacity for discrimination.

Independent. 54: 429-31. February 20, 1902.

Referendum in the United States. John Bates Clark.

All legislation can in some way be revised, and if necessary reversed, by the popular vote, and that, too, without any change in our constitutional forms. If corrupt measures are passed, can we not turn out those particular rascals who enact them and put in others? The troubles connected with that policy are numerous and serious. If the new men we put in are adherents of another political machine, henchman of another boss, the practical gain may be small and transient. The change of parties may do the one thing that we are determined to have done, since it may reverse one particular measure, but it will leave the field open for other measures many of which may be as corrupt as the one that we suffered from before.

The election of 1903 [New York] will become to a considerable extent an appeal to the people concerning the policy to be adopted in reference to saloons. Can they decide that question on its merits? If they want one result, they will have

to accept with it the government of the city by Tammany Hall, with everything which that means. If they want the other result, they will accept with it government by those who are called the Fusionists. Would it not be well to separate, in this instance, the discussion of the measure from the election of the party that is to rule? Is it well to stand where the adoption of a course of action that the people really want would have to mean a return to Tammany? This is only one striking instance of the evil that comes from dictating measures in and by the act of choosing men. With the institution of the referendum in working order, we could first determine what policy we will adopt in regard to saloons, and then we could select the men to whom we wish to intrust the general interests of the city.

It is discouraging enough to try to purify American politics. It means eternal vigilance, but it also means eternal work against unnecessary difficulties. We could remove many inducements to corruption if we chose to do it. We could put the bosses where they could not receive large pay for political "goods" because they could not promise, with any confidence, to deliver them. We could put the people where they could detect the rottenness of such compacts, and in a glaring case would be sure to defeat them. We could make it possible for voters to have their way in controlling measures of government without being forced, whenever they prescribed a measure through the medium of an actual election, to accept with it men and rings that they do not want in general control of the state.

Independent. 62: 1407-10. June 13, 1907.

Initiative and Referendum in Operation.

Arthur Sherburne Hardy.

Much diversity of opinion prevails among Swiss publicists and legislators as to the practical results of the referendum and initiative. Naville, of Geneva, declares that the large numbers of abstentions proves that it is not the people, but

a relatively small part of the electoral body, which accepts or rejects a law; that political leaders having a majority in the legislature always possess the means to secure a popular majority, especially when the law is a complicated one; and that it is ridiculous to suppose that each citizen can form a just and matured opinion upon the laws submitted to him. One of the strongest claims made for the referendum was that it would silence the protestations of the minority by showing where the real majority is. This claim the remarkably large number of abstentions would certainly seem to negative. In the case of so important a measure as the constitutional amendment of July 7th, 1891, establishing the initiative, less than one-half the registered voters (641,692) participated, the affirmative and negative votes being 183,029 and 120,599 respectively. Only when a fine is imposed for failure to vote is the voting general. For example, in two communes of the Canton of Zurich, where voting is obligatory, 94 and 97 per cent. of the voters took part, while in three communes where voting is not obligatory, only 19, 14 and 10 per cent. voted on the same measure. From 1869 to 1888, in sixty-eight measures submitted to the people in Berne, the average abstentions were 45 per cent. In Bale-Campagne, from 1864 to 1881, of ninety-four popular votes, seventeen were altogether without result, because an absolute majority, as required, took no part whatever. To defer the exercise of the popular judgment to a fixed time, as in the Canton of Berne, where the people are called upon to pronounce on public measures once a year, entails serious disadvantages. On the other hand, to refer each measure to the people as it is passed, as in Soleure, where in 1892 there was a popular vote every three weeks, is a heavy tax on the time and interest of the voter. On certain measures the average voter is clearly incompetent to pass judgment. It would unquestionably be difficult to discriminate between measures which can or cannot be submitted to the suffrage, but neither the experience, the education or the intelligence of the people justifies the contention that legislation by them is possible in the sense that each citizen can study, digest and form a really personal opinion on every submitted law. This is especially true

of measures which affect the budget and the control of expenditures, a fact generally recognized in Switzerland by exempting the budget from the referendum. In Berne, where the compulsory referendum is in force, the people on several occasions rejected the budget. Finally an article withdrawing the budget from the referendum was inserted in a bill which, having certain economics in view, was sure to receive popular sanction. This trick succeeded and the budget is not now submitted to the people. The uncertainty of elections shows that the predictions, so frequently made, as to what the people would do if certain measures were referred to them, are untrustworthy. No one knows what the people will do until they have acted. The experience of Switzerland indicates that many expenditures justified by the national need and important for the national development, which indeed subsequently became the cause for national pride, would be vetoed by the taxpayer. Great measures of this nature are initiated by the far-seeing few, but are not favored by the cautious majority.

M. Lavelaye, commenting on the practical results of the referendum in Switzerland, asserts that it has not only shown itself hostile to large expenditures, but decidely parsimonious. Motives of this character explain the rejection in 1894 of the proposition to appropriate the meager sum of 2,000 francs for the Swiss legation in Washington, then most inadequately provided for.

Independent. 64: 595-6. March 12, 1908.

Direct Legislation Movement.

In twenty American states the movement to establish real popular government is making rapid progress. In Oregon, since 1902, the initiative and referendum have been in practical operation, with noteworthy results. . . . Of the actual working of these democratic methods in South Dakota, ex-Governor Charles N. Herreid says that recourse to the power of the people to act directly has never been necessary since this reform was achieved, because no attempt at questionable legislation has since that date been hazarded. Nevada also has

the initiative and referendum, and Utah supposed that she had them, but the law proved to be defective and inoperative. Oklahoma has come into the union with the initiative and referendum guaranteed in her constitution. Ohio, Maine and Montana are about to submit to the people for ratification legislative resolutions authorizing popular legislative action. Massachusetts, Illinois and Texas, not going quite so far, have passed laws providing for a direct expression at the polls of public opinion on specific measures. Iowa has authorized her cities to institute the commission system of government by initiative and referendum. In New Jersey a bill was passed by the legislature enabling the people of any city to demand a referendum vote on local affairs, but it was vetoed by the governor. In the cities of Omaha, Lincoln, Wilmington, Houston, Alameda, Santa Cruz, Berkeley and Grand Rapids, the people enjoy the right to participate directly in the conduct of their local affairs, and they have done so vigorously, especially to prevent franchise grants, and other measures contrary to the public interest.

New York, if not in the van of this movement, is not disposed to bring up the rear. A concurrent resolution prepared by the New York State Initiative and Referendum League will be introduced in the state senate by Senator Saxe, and in the assembly by Mr. Toombs. It provides that the people reserve to themselves power to propose laws and amendments to the constitution, and, independently of the legislature, to enact or reject them at the polls; also to approve or to reject at the polls any act, bill, or resolution passed by the legislature. It is not probable that this resolution will be passed at this session, and it may be some time before the people will have the opportunity to vote upon the necessary constitutional amendment. But there is no reason to doubt that opposition will presently break down, and that New York will take her place among the commonwealths in which government for and by the people is a reality. Much educational work to this end is being vigorously carried on by means of lectures, printed matter and correspondence. It will all tell in time.

Theoretically, representative government should be popular government; but practically it creates a career for the professional politician; and the professional politician however upright his intentions, is driven by the exigencies of his life to build and maintain the political machine which is moved by bribery and graft. The professional politician must get elected. To that end he must have votes. To that end he must have money. To that end he must do something for men who are willing to pay money for services rendered or goods delivered. Direct legislation by the initiative and referendum cuts thru this vicious circle. Its immediate effect, therefore, is to clean up political business.

It has another effect, however, which is quite as important. It educates and disciplines the people in political competency. The world has enormously over-estimated the educational value of that popular participation in political affairs which consists only in voting for candidates for office. Popular government to this extent merely centers attention upon personal qualities. It makes the voter a blind hero worshipper or the pliant tool of a boss. It provides no incentive to study questions, to understand measures. All that is left to the legislator. Under the initiative and the referendum the voter turns his attention from men to measures and becomes an informed citizen. Although years and generations may pass before more than a small minority of the people will thus become thoroughly informed and interested, yet every year the number of such increases where direct participation in legislation is the rule, while under the merely representative system voters become more indifferent, more neglectful and more stupid.

Direct legislation is the most important "next step" to be taken in American political evolution.

Independent. 64: 1444-7. June 25, 1908.

Oregon Election. George A. Thacher.

The right of 8 per cent. of the voters to submit to the people (by initiative petition) any law or amendment to the constitution which they desire was freely exercised at the election

on June 1st, and furnished as sharp a test of the new institutions as could have been devised.

The followers of Henry George submitted a single tax measure which exempted all dwellings and manufacturing plants, all household furniture, livestock, tools and improvements generally from taxation. It did not exempt business blocks, merchandise, money or credits. The measure was offered in such form as to become a part of the constitution of the state if adopted.

In the pamphlet containing all measures offered, and the arguments pro and con, which is published by the secretary of state and mailed to all the voters, the association behind the single tax presented nearly five pages of argument for the measure. No opposing argument was offered. The space filled by arguments is paid for by those offering them, and was estimated at fifty dollars a page.

The voter's "text-book," as it has been dubbed, contained 126 pages this year. The newspapers gave a great deal of space to the discussion of the single tax, especially in the form of letters from individuals. The measure was overwhelmingly defeated. In the city of Portland the vote was evenly divided, showing that the owners of homes felt in many instances that their assessed valuations would be reduced by considerably more than one-half under the new plan. The owners of property throughout the state realized that their dwellings and improvements were worth less than their land, and that consequently their assessed valuations would be proportionately higher than in the cities and towns.

An amendment was offered under the attractive guise of home rule for municipalities (which they already possess) permitting the regulation of gambling, saloons, race tracks and theaters by the voters regardless of state criminal laws. It was cleverly drawn and the stock arguments were offered in its favor. Two reform associations submitted adverse arguments, and the amendment was badly defeated.

The rival interests in the salmon fisheries of the Columbia river each submitted a law restricting the business of the other, with the virtuous object of protecting the salmon. Arguments

were submitted for and against both measures, and many columns of paid advertisements in favor of each law were printed in the daily papers. The legislature has never succeeded in protecting the salmon because of these rival interests. The contest is between the up-river fishermen and the lower-river fishermen. The voters settled the matter by adopting both laws. They do not conflict either in their object or the method of securing it.

An amendment was offered to secure woman suffrage. This is the fourth attempt, and it was badly defeated. Curiously enough, there is an organization of women who work and spend their money to defeat the plan, which makes it uphill work.

A corrupt practices act, regulating expenditure of money in campaigns, was submitted to the voters and adopted. The bill fills twenty pages of the voter's text-book and apparently makes provision for every possible contingency. It is said to be modeled on the British laws of 1883 and 1895. It limits a candidate's campaign expenses to one-fourth of one year's salary, and provides for circulating campaign literature partly at the expense of the state. The legislature failed to pass any law on the subject at the last session, tho one was introduced.

An amendment was offered and adopted to terminate the power of prosecuting attorneys to file an information for crime. An amendment was offered and adopted which prescribes the method for retiring a public officer and for a new election. Details are left to legislative acts, but not more than 25 per cent. of the voters shall be required to sign the petition for recall. Officers may not be recalled until after six months' service, except in case of members of the legislature, who are subject to recall five days after the beginning of their first sessions. It seems to be a drastic measure, but it will require some organization and a strong public sentiment to put the machinery in operation. It is expected that nothing but a flagrant offense will cause the voters to act.

Probably the most important amendment which was adopted is the one providing for proportional representation. The details are left to the legislature. It is surprising how many efforts to secure representation of minority parties have been made in

the United States. None has been successful so far, and the principle of the gerrymander rules supreme. If a simple and efficient plan can be provided in Oregon, and the supporters of the movement believe that it is practicable, it will be difficult to estimate the far-reaching effects of the reform. Naturally the bosses of the dominant party regard it as abhorrent to the settled order of the universe.

There were four measures passed by the last legislature on which the referendum was invoked by 5 per cent. of the voters. One was of purely local interest to the people of Multnomah county, and the action of the legislature was approved at the polls. One was an act appropriating money for armories for the state militia. That was defeated.

Another measure which excited great interest was an increased appropriation for the state university, which was passed by the legislature. The grange organization filed the referendum petition on the score of economy. The action of the legislature was approved by a rather moderate majority. The last of the four involved a contest between the people and the legislature. In 1906 the voters enacted an anti-pass law at the polls. The legislature in 1907 passed an act virtually compelling railroads to give free passes to all state, county and district officers during their terms of office, repealing in effect the law of 1906. A referendum petition was filed by the voters, and the action of the legislature was repudiated by a big majority.

There were four measures adopted by the last legislature which that body referred to the voters. One was an amendment increasing the pay of legislators from three dollars per diem to four hundred dollars for each regular session. It was defeated which seems a pity.

Another was an amendment increasing the number of judges of the supreme court and transferring probate business to the circuit court. That was defeated. An amendment permitting state institutions to be located elsewhere than at the capital was approved. The constitutional restriction has always been ignored unless the matter got into court. An amendment changing the time of the state election from the 1st of June to

the first Tuesday after the first Monday in November was adopted.

The election of United States senator claimed the keenest interest. Statement No. 1, which is a promise on the part of legislators to vote for the people's choice, has been attacked most bitterly by the old Republican leaders on the ground that a Republican legislature might find itself bound to elect a Democrat to the Senate. That even has actually occurred this year thru a peculiar combination of circumstances.

Governor Chamberlain, who is a most popular man and an exceedingly clever politician, has had the reputation all over the state (and he earned it fairly) of being unqualifiedly in favor of the initiative and referendum and the popular election of senators. He took advantage of the situation which his political opponents had arranged, and won the election by nearly two thousand votes. There were enough Statement No. 1 men elected to form a clear majority in each house, and most of them have declared their purpose of standing by their promises to elect the people's choice.

The first claims of Republican opponents of Statement No. 1 after the election were that either the Republican legislators would repudiate their promises or that the people would repeal the system. I believe that both ideas are mistaken. The method of popular election of senators may be ridiculed to any extent, but, nevertheless, it works, and the voters know it. As an indication of public sentiment there was a law offered by initiative petition instructing the members of the legislature to vote for the people's choice for senator. The law cannot be defended on constitutional grounds, but when it is remembered that about two-thirds of all the voters in the state voted for it, it sounds a little silly to claim that these same voters are going to repeal the Statement No. 1 law. The people have exercised the power of electing senators, and it is idle to hope that they will relinquish it because the dominant party happens to be split into factions, with one of them in favor of the old order. A few weeks ago the United States Senate showed where it stood in the matter of offering an amendment to the constitution providing for the popular election of senat-

ors. The Oregon method may be clumsy, but it promises to be effectual.

The story of the Oregon election confirms the idea that practically all questions are reducible to the elements of right and wrong, and that the voters have as fair a sense of the distinction as members of the legislature, and that where the legislature fails to do its duty the voters can be trusted to fill the gap.

Independent. 66: 421-3. February 25, 1909.

Initiative and Referendum in Oklahoma. L. J. Abbott.

At the recent election the voters of Oklahoma passed upon five referenda or "state questions," as they are officially designated. Four of these were defeated outright and one had a doubtful majority. The vote was not a little disappointing, because from thirty to fifty thousand of the electors failed to express themselves either way upon any of the propositions.

Four of the five measures were submitted by the state legislature and one by initiative petition. Three were constitutional amendments, one a statute, and one a mere question of state policy.

"State Question No. 1" had to do with the agency feature of the prohibition bill. Last winter the legislature enacted an enforcement law in accordance with the prohibitory provisions of the enabling act and the constitution. The law established agencies in all the county seat towns and in all other cities of over two-thousand population. Friends of the measure argued that no prohibitory enactment could stand that did not make it possible to obtain liquor for use in the arts and sciences. But this provision of the enforcement law met so much opposition that the legislature attempted to shift the responsibility for its continuance after November by providing for a referendum on the agency portion of the act. This was done, altho the constitution clearly provides that emergency legislation is not subject to the provisions of the referendum. This was clearly extra-constitutional, and altho the bill was defeated by

a considerable plurality, the courts have granted a writ compelling the chief dispenser and his agents in the respective towns to continue selling liquor.

The Oklahoma agency is in no way patterned after the South Carolina dispensary statute. Liquor in Oklahoma is never sold as a beverage by the state. The law has the unqualified endorsement of all the temperance organizations in the state, and has been honestly and, we believe, successfully administered.

The second constitutional amendment provided for the "Torrens land system." This method of transferring land is one of the pet hobbies of Speaker W. H. Murray. The energetic opposition of the abstract companies kept the provision out of the constitution during the session of the convention, in spite of the fact that Mr. Murray was then president of the convention. At the recent election this provision had a plurality of over thirty thousand. Yet it failed of enactment because fifty-five thousand electors were not enough interested or were too ignorant to vote either way upon the proposition, a majority of all votes cast at the election being required to enact a constitutional amendment.

The third provision for altering the constitution concerned the location of the capital. The enabling act required that the state capital should remain at Guthrie until 1913. This provision was, perforce, accepted by the constitutional convention, but is resented by other cities with capital aspirations and also by the Democratic majority thruout the state. Guthrie is the strongest Republican municipality in the commonwealth, and its large colored population makes it especially obnoxious to ardent negrophobes. The constitutional amendment was an open effort to vary the terms of the enabling act, and, because of this, was of doubtful legality. But an aspiring young legislator from a rival city succeeded in getting the matter before the people in the form of a referendum. It received a larger affirmative vote than any other proposition, but it also lacked by over twenty-thousand the necessary majority of all votes cast. So the capital will probably remain where it is for the present.

The fourth referendum was merely to express an opinion upon a state policy. It is known as the "New Jerusalem," and is a scheme to build a new and perfect city as a state capital. When the matter was first broached in the state legislature its enemies dubbed it the "New Jerusalem" and the name stuck. The argument following the printed bill distributed by the state for the enlightenment of voters explains that "it is proposed that the state shall select a capital site at some point centrally located. By so doing and profiting by the sale of lots, it could be built and beautified without expense to the state, and the name commonly applied to it would be realized indeed and in truth." As this was merely the expression of an opinion upon a state policy the forty thousand plurality it received is regarded as having carried it; altho it, too, fell short of a majority of all votes cast. Doubtless the legislature at its next session will attempt to secure a site for such a model city.

Question No. 5 was the only referendum presented by initiative petition. It was a statute to sell the school lands. Ever since the organization of the territory in 1890 the tenants of these public lands have clamored for their sale. The lessees, because of their zeal and solidarity, have controlled both political parties for years. Had the federal government allowed the lands to be sold previous to statehood this magnificent school endowment would have been squandered long since, just as it has been in all of the states of the middle west. But joining old Oklahoma with Indian Territory (which was given money in lieu of lands) has given the state such a large population not directly interested in the sale of the public domain that the bill of the lessees' lobby was defeated in the state senate. Immediately on the adjournment of the legislature the lessees initiated the already discredited measure. The politicians of both parties very generally sided with them because of a servile cringing to their eight thousand votes, yet they were decisively beaten. In fact, the bill was defeated by almost a clear majority of all the votes cast—this, too, in spite of the fact that all of thirty thousand electors failed to vote either way upon the measure. This certainly was a victory worth

while, for it leaves Oklahoma with a larger college and common school landed endowment than is possessed by any other commonwealth in all the world.

There is no denying that Oklahoma's first experiment with the initiative and referendum has not been entirely satisfactory. It has one of the lowest percentages of illiteracy of all the states in the union. It probably has the smallest percentage of foreign-born citizens. Yet one voter in every nine paid no attention to any of the "state questions." This is generally ascribed to the thirty thousand negro voters of the commonwealth. The negroes, however, are not all illiterate, nor are they the only ones who failed to vote upon the various referenda. The fault lies partially with the ballot. One can vote a straight party ticket by merely putting his X in the circle under the "rooster" or the "eagle." There is no way to vote upon referendum propositions in such wholesale fashion.

The remedy seems to be to abolish the pictures at the head of the ticket, and to require the elector to vote upon every proposition upon the ballot in order to have his vote counted. But even if it remains as it is, few Oklahomans would think of abolishing direct legislation. It is a wholesome restraint upon the legislature, and besides, if these five measures had been voted upon at a special, instead of a general, election, each majority would have registered the opinion of by far the greater portion of the intelligent voters of the state, and every measure would have been settled exactly as the people intended it to be, for at a special election the sluggish and unintelligent would have no way of blocking the will of the great majority.

International Journal of Ethics. 13: 133-51. January, 1903.

Moral Aspects of the Referendum. Langdon C. Stewardson.

It is admitted on all sides that the system of representation as at present constituted does not represent the people at large; for while some classes are represented to an extent all out of proportion to their lawful needs and actual numbers, other classes such as the trades and laborers and artisans are hardly

represented at all. It is said, of course, that in the United States at least, every man has a vote; but it should be remembered that a vote does not by any means secure representation, whereas a wealthy merchant may obtain the legislation he desires without ever giving himself the trouble of going to the polls.

Quite as glaring, too, as the defects of the representative system and even more menacing to the public good is the corruption which is rife in almost every representative body, as well as the ignorance and low moral tone of many of the representatives. It was expected when the representative system was inaugurated that it would be a matter of pride as well as of interest with the community to elect its very best men as its spokesmen and leaders. Such an expectation as we all well know, has not been realized. Our state legislatures in particular seem to be the greatest disappointment of all in this respect, for there it is that the malign personality of the boss holds sway and, with the money of wealthy individuals or corporations in his pockets, makes and unmakes law at will.

The evils of the representative system are therefore great and grievous. Manifold also are the temptations to which the representative by virtue of his position is exposed. Unlawful usurpation of power individually or in committee, the illegal exertion of administrative pressure for personal or party ends and the demoralizing opportunity to obtain the prize of illegitimate riches, have all combined to impair or debauch the character of many representatives. Great political principles are forgotten or repudiated in the busy game of trafficking in spoils of office, whereas in the mad pursuit of partisan or private aims the people's good and the people's cause are for the most part abandoned.

Michigan Political Science Association Publications. 3: 57-80. April, 1898.

Popular Initiative and Referendum. O. M. Barnes.

The circumstances that led to the adoption of the popular initiative in the Swiss national constitution were peculiar. The

adoption was not the work of statesmanship, but of contending factions; some religious, some political, others social. Each believed it could, by means of the initiative, force its own measures upon the nation in spite of the unwillingness of the legislature to pass them. Thus, we see, the measure has been in existence but a short time and the nation where it exists is small, peculiarly situated in a mountainous district, with but little occasion for new laws.

If found useful or admissible in that nation this would not prove the method suitable for a great nation differently situated any more than the existence of a government by an emperor in Russia proves the fitness of such form of government for Americans.

It is said in behalf of this plan that under it no measure, if opposed by any considerable part of the voters (in Switzerland, 30,000), can become a law unless it is approved by a majority of the people, and that any measure desired by a majority can be made a law by them, even when the statesmen and legislators refuse to approve or pass it.

But it should be observed that it enables the majority to make any measure law, without regard to the interest of those who are to be most affected by it, and if the minority or any citizen appeals to constitutional guarantees, the same power that favors the law can remove the constitutional guarantees. So it gives to the majority, to a degree never before known, except in revolutionary times, the uncontrolled and direct dominion over the minority.

In favor of the plan it is specially maintained that it is more democratic and places the law making more in the hands of all the voters, and that it enables those who desire particular laws to promote or protect their interests, to pass them.

The fact that the measuure is more democratic is not a sufficient reason for adopting it, and special interest does not conduce to wisdom or justice in legislation, as is here assumed.

I believe that it would weaken respect for the parliamentary mode of making laws, and weaken respect for true statesmanship, and tend to put affairs into the hands of clubs and unions; that it would put the minority in the unrestrained power of the

majority; a condition where they will be in the constant fear of oppression or be actually oppressed; for it may be safely expected that this majority will sometimes, at least, impose burdens so they will fall most unequally on the minority and distribute benefits so they will insure most to themselves; and that it would weaken constitutional guarantees; indeed it would be more proper to say it would abolish constitutional guarantees, as it proposes that the courts shall have no power to declare the acts of the majority illegal for any cause.

That a measure is not to be preferred simply because it is more democratic is too plain to need argument. Democracies differ. Some supply more security to the citizen than others, and that one is the best which gives its citizens the greatest security and the greatest liberty. As a limited monarchy is better than an absolute one, so a limited democracy is better than an absolute one, and for the same reason. Liberty is safest under governments of limited powers, no matter what the form.

It is claimed by some of the advocates of the popular initiative that representative government in the United States has proven a failure; that a degeneration has taken place; that the remedy for this is the initiative.

I deny that the evils complained of come from the representative system. That has been always a bulwark of liberty, a source of safety, a means of government by the best.

On this point I invite attention to the fact that, accompanying this alleged degeneration, our government has grown more and more democratic; that the participation of the people in the making and administering of the laws has grown more and more universal. So our history does not justify the inference. The evil is clearly due to other causes than the representative system and the remedy proposd will only aggravate it. May not the remedy be an improvement of the electors themselves, so there will be less of ignorance and unwisdom behind the representative to misdirect him?

It has been said the initiative would lessen bosses. The opposite would be the case. It would increase the power and multiply the opportunities of the political boss.

Do not make the mistake, sometimes made by hasty thinkers, of regarding the boss as the leader. They are very unlike, though they are both seen to occupy similar positions. The leader is a person of fixed convictions and right views who, regardless of minorities, seeks to conduct the people in right paths to right actions. He struggles to correct what is erroneous and to right what is wrong. The boss, on the other hand, makes no effort to correct the erroneous views. His effort is to be with and control the majority. To do this he says to the masses, "What do you want?" never "What would be right?" His answer is, "What you want I want, and that we will all go for."

Leaders are necessary. They exist in all enterprises. The boss only exists in democratic countries—I mean the political boss. The power of this character increases as we approach the absolute form of democracy.

After all, bad as boss control is, I am not sure but boss control is better than uncontrol, where the form of government is an absolute democracy. Safety consists in avoiding the conditions that give him his power for hurt and in maintaining conditions that save us from it, viz., the limited democracy and the supremacy of business principles in administration.

A great safeguard against the enactment of bad laws is the power to fix the responsibility upon those who pass them. The sense of the responsibility of the lawmakers under the proposed plan will be greatly weakened and the power to fix it quite destroyed. Under the present modes the responsibility must be assumed by the Senate and House of Representatives. The names of those who pass laws are recorded. Their responsibility is fixed. On the other hand, if a law is to be made by the vote of all the electors, there will be no practicable way of holding any individuals responsible. There will always be voters who will cast a secret ballot for laws that seem to promise benefit to their class though they be clearly wrong, when the same men would not dare to vote for them in the legislature. A great multitude will perpetrate a wrong, that the individual members would not dare to do. The responsibil-

ity being so divided, the individuals seem to themselves to take but a small share of blame.

I have said nothing of the expenses of a referendum, as I have undertaken to treat the subject only as bearing upon the question of liberty and good government. The expenses would be great in any American state. If ordered on the petition of electors to prevent a law passed by the legislature from going into effect, the election would naturally be a special one, which would involve the expenditure of many thousands of dollars.

We might confidently maintain that a limited democracy is best for an enlightened and conservative people, but we are driven to hold that an absolute one, like that contained in the combined initiative and referendum, would not conduce to liberty, good government, or general happiness.

Nation. 59: 152-3. August 30, 1894.

How the Referendum Would Work.

A strong appeal has been made by a certain school of political writers in this country for the adoption of the referendum principle, and the submission of proposed laws to the people for their judgment. The advocates of the scheme have been active enough in Massachusetts to secure its endorsement in the platforms of both of the great parties, and the last legislature came very near taking the necessary steps for submitting an amendment to the constitution, so as to embody it in the fundamental law.

It is a noteworthy fact that, in all the arguments advanced in favor of the system, it seems to be taken for granted that, if any question were submitted to popular vote, every voter would express his opinion upon it. It has been urged that the state would be benefited by having important laws ratified by the people before they should become operative, and a great deal is said as to the advantages of finding out just how the people feel about them. Since the Massachusetts legislature adjourned, however, the people of that state have been given an object-lesson in the working of the referendum. For years

the city of Boston has been discussing the matter of rapid transit. It had become the burning local question. The newspapers have discussed it at great length. It has been repeatedly before the city council and the legislature. All sorts of schemes have been proposed from time to time. Finally, what is known as the Meigs plan was endorsed by the legislature, upon the condition that it should be approved by the people. A special election was called for the sole purpose of deciding the question. There was an animated canvass, and, according to the theory of the referendum, there ought to have been a great outpouring of the people to improve the opportunity thus afforded to decide a most important issue. In point of fact, the total vote was much less than half the poll in the last election for governor—not quite 30,000, against over 70,000 last November.

The 29,704 men who took the trouble to go to the polls were divided pretty evenly in opinion, 15,542 voting yes and 14,162 no. An important question of public policy was thus decided by the votes of less than a quarter of the men who turn out in an ordinary state election like last year's. Worse still, there is great reason to doubt whether a large proportion of those who voted either way had a clear understanding of the matter. The Boston Herald heard of two cases where the voters supposed that they were recording their views on the license question, and voted yes because they favored the sale of liquor! When one paper accidentally learns of two such cases, there is every reason to suppose that hundreds of votes were cast quite as ignorantly.

There was nothing exceptional about this Boston experience. Two amendments to the constitution were submitted to the people at the recent state election in Alabama. One proposed to allow the city of Birmingham to increase her tax-rate, which is necessary for her prosperity. The other proposed to allow any city or school district to vote a tax of one-fourth of one per cent, for educational purposes, to supplement the fund raised by state taxation. There was no serious opposition to either amendment, but both failed. They died of sheer neglect. The constitution requires that a majority of the voters who go

to the polls shall vote in the affirmative to carry an amendment, and most men were so much interested in the contest between Oates and Kolb that they did not vote either way on either of the amendments; the total yeas and nays not reaching half the total vote for governor. The election thus failed to cast any light upon the question whether the proposed changes meet with the approbation of the people.

Almost every vote on a constitutional amendment in this state has been a proof of popular indifference. In 1869, on an amendment providing for equal assessment and taxation, 462,072 votes were cast (for and against), while for the head of the state ticket (secretary of state) a total of 641,707 votes was cast. In 1876, the people voted on two of the most important constitutional amendments ever submitted to them—those placing the canals and state prisons under single heads instead of the expensive commissions. The total vote of the state for president that year was 1,015,502. The total vote on the public-works amendment was 614,985, and on the prisons amendment 611,184.

The same thing has happened over and over again in other states. It is the rule in many commonwealths that an amendment must receive the affirmative votes of a majority of the voters to carry it; and it is a common thing to have propositions fail to which there is no serious opposition, because those who really favor the suggested change do not care enough about it to take the trouble to express their opinion.

The advocates of the referendum have been arguing the matter as though it were only a question of theory. They say: "Consult the people freely. They will be glad to record their opinion, and we shall find out just what they think." This would be well enough if the matter had never been tried. But it has been tried, repeatedly and thoroughly, in different parts of the country. Experience has shown that it is the hardest thing in the world to get voters to express themselves on any issue except that of candidates for office. If other propositions are submitted at the regular election, most men who go to the polls will pay no attention to them. If they are submitted at a special election the majority will not go to the polls; and a

good many of those who do go will not know what they are voting for. In either case the referendum breaks down utterly.

Nation. 59: 193-4. September 13, 1894.

Vox Populi in Switzerland. Albert Bushnell Hart.

No criticism of the referendum can be worth while which does not take account of the difference of political conditions in the United States and in Switzerland. In size, population, and wealth the latter country is very like an American state, say Massachusetts; the six hundred and eighty thousand voters are distributed in a compact land, with excellent election machinery. The cantons, unlike the commonwealths in America, are steadily losing ground to the federal government, and the Swiss senate, the council of states, has less power and prestige than the elective national council. The legislative practice of the two countries is also different: few bills are presented to the federal assembly, and very few are enacted, so that in 1891 but fourteen general laws were put upon the statute-book. The executive council, though without a veto, has an important part in legislation: it legislates for itself in many matters of detail; and on larger affairs prepares and submits bills which the assembly frequently enacts without change. This preparation of legislative material by the executive is a tradition in the cantons as well as in the Swiss union. The diet took this function on itself under the old Confederation, and, indeed, the word "referendum" was originally applied to the process of referring measures back from the diet to the cantons; it was too often a political "how-not-to-do-it." The present referendum is, therefore, practically a check both on the executive and the legislature, and can easily be invoked on a considerable proportion of all general statutes. To apply it to acts which have already run the gauntlet of an executive veto, and have found a place in the obese statutebook of an American commonwealth, is a different matter. Nor is it so easy in Switzerland to crystallize the opinion of the assembly into concrete measures, since the lively sectional and religious rivalries of the

country are not expressed in well-organized parties. Conventions and caucuses with us take the place which the initiative is meant to fill in Switzerland. So different are all the conditions in the two countries that the success of the referendum in the one does not at all imply that it would work well in the other; while if the referendum has disappointed its friends in Switzerland, where it harmonizes with other institutions, it is not likely to succeed in the United States. And whatever might be done in the states, a national referendum would nullify the Senate, and hence be a complete change in the American system of government and probably a national misfortune.

A judgment of the referendum must be based on the working of the electoral machinery, on the interest shown by the voters, and on the popular discrimination between good and bad measures. The process of invoking and voting on a referendum is simple and easily worked, if not used too often. Although the assembly has, in urgent cases, the constitutional right to set a resolution in force at once, it always allows from three to eight months' delay so as to permit the opponents of a measure to lodge their protests against it. Voluntary committees take charge of the movement, and, if a law is unpopular, little difficulty is found in getting together the necessary thirty thousand or fifty thousand signatures. Only thrice has the effort failed when made. When, as in 1882, the signatures run up to 180,000, the labor is severe, for every signature is examined by the national executive to see whether it is attested as the sign manual of a voter; sometimes, in an interested canton, as many as 70 per cent. of the voters have signed the demand. The system undoubtedly leads to public discussion; newspapers criticise; addresses and counter addresses are issued; cantonal councils publicly advise voters; and of late the federal assembly sends out manifestoes against pending initiatives. The federal executive council distributes to the cantons enough copies of the proposed measures, so that one may be given to each voter. The count of the votes is made by the executive council as a returning-board. Inasmuch as the Swiss are unfamiliar with election frauds, and there has been but one very close vote in the national referenda, the count is not

difficult, but there are always irregularities, especially where more than one question is presented to the voters at the same time.

What is the effect of the popular votes, thus carried out? The following table, based on official documents, shows the results for the twenty years, 1875-1894:

	Passed	Rejected	Total
(a) Constitutional amendments proposed by the Assembly (referendum obligatory)	1	6	7
(b) Constitutional amendments proposed by popular initiative (50,000 signatures)	2	1	*4
(c) Laws passed by the Assembly (referendum demanded by 30,000)	14	6	20
	17	13	31

*One measure still pending.

Making allowances for cases where more than one question has been submitted at the same time, there have been twenty-four popular votes in twenty years. In addition, most of the cantons have their own local referenda; in Zurich, for example, in these twenty years, more than one hundred other questions have been placed before the sovereign people. These numbers are large in themselves, but surprising in proportion to the total legislation. Out of 158 general acts passed by the federal assembly from 1874 to 1892, 27 were subjected to the referendum; that is, about one-sixth are reviewed and about one-tenth are reversed. Constitutional amendments usually get through sooner or later, but more than two-thirds of the statutes attacked are annulled. To apply the system on such a scale in any state of our union is plainly impossible; thirty-nine-fortieths of the statute-book must still rest, as now, on the character of the legislators.

Nevertheless it may be worth while to excise the other fortieth, if experience shows that the people are more interested and wiser than their representatives, when a question is put plainly and simply before them. I must own to disappointment over the use made by the Swiss of their envied opportunity.

On the twenty referenda between 1879 and 1891 the average vote in proportion to the voters was but 58.5 per cent.; in only one case did it reach 67 per cent.; and in one case—the patent law of 1887—it fell to about 40 per cent. in the Confederation, and to 9 per cent. in Canton Schwyz. On the serious and dangerous question of recognizing the right to employment, this present year, only about 56 per cent. participated. In Zurich there is a compulsory voting law, of which the curious result is that on both national and cantonal referenda many thousands of blank ballots are cast. The result of the small vote is, that laws, duly considered by the national legislature and passed by considerable majorities; are often reversed by a minority of the voters. The most probable reason for this apathy is that there are too many elections—in some cantons as many as fifteen a year. Whatever the cause, Swiss voters are less interested in referenda than Swiss legislators in framing bills.

Of the comparative wisdom of the representatives and their constituents it is difficult for a stranger to judge. The general tendency of the referendum is to rebuke the assembly; more than half the questions submitted are lost on popular vote, and more than half of all the ballots cast have been adverse. Certain cantons, notably Uri and Appenzell (Inner Rhode), are almost always against the proposition, without much reference to its purport. The records of the assembly rarely show test votes on any question, but there is a remarkable divergence between the temper or judgment of that body and of the people. The constitutional amendment of 1893 on the slaughtering of animals commanded less than a third of the members of either house, but was carried on popular vote by about three to two. The amendment of 1894 on the practice of professions had every vote in its favor in the council of states, but was lost in referendum. An eminent publicist, member of the assembly and an upholder of the referendum, explains this divergence by the public spirit of the members, who vote according to their convictions and not in subservience to their constituents. If this be true, it is an indictment of the system; if the people are wiser than their representa-

tives on questions of legislation, the latter ought to bend beforehand, without waiting for the pressure of the referendum. So far as I can judge, public opinion on such matters is so uncertain that the members cannot understand or predict it.

On the recent proposition to assert the right of every Swiss to employment, only 2 members out of 110 voted for it; but out of doors it received 75,000 votes against 308,000. Certainly the referendum is especially fatal on complicated questions of commerce and finance, the least suited to such a system. It was only on the third attempt that a bank-note system could be arranged. Another interesting example is the bill for the purchase of the Swiss Central Railroad. The executive council, in May 1890, desired to negotiate on the subject, and the assembly passed a resolution granting the necessary authority. No referendum was laid against the resolution, and the council, believing that the principle was accepted, in March, 1891, made a provisional contract for the purchase. The law ratifying this contract was duly passed, but 92,000 signatures were lodged against it, and it was defeated by a majority of 140,000. This might be accepted as a popular judgment against state railways; but, in fact, it seems to be only a protest against the terms of the contract, and it is expected that the work will soon be all done over again. In the cantons it is even worse: I am informed that in some of them new money bills are almost invariably rejected on referendum, and humiliating devices have to be used in order to get the funds necessary for the support of the government. Most impartial observers who examine the list of bills lost in the national referendum will be inclined to think the judgment of the assembly better and more consistent than that of the people.

To the Anglo-Saxon mind, accustomed to distinguish between laws of detail and fundamental laws, which are independent of temporary waves of public feeling, the referendum seems confusing. Is it necessary to set in motion all the machinery of a popular election to settle such questions as sometimes come before the Swiss people? In 1884, when General Frey, now president of the Confederation, was minister in Washington, the executive council asked that his allowance

be raised from fifty thousand francs to sixty thousand francs a year. The assembly, though not at that time given to prodigality, adopted the necessary vote, in the form submitted by the executive council. Ninety-three thousand protests were lodged, and the act was reversed in referendum by 40,000 majority. Even admitting the superiority of the judgment of the people over that of the minister, the executive council, and the assembly, it does not seem worth while to spend so much public energy on a matter of so little moment. The initiative deals less with small questions, but it acts as a standing constitutional convention to frame amendments. Thus in 1893 a clause possibly directed against cruelty to animals, and certainly intended to annoy the Jews, was, by the participation of less than half the voters, solemnly added to the constitution. In the United States we have already the good effects of the referendum so far as it deals with changes of the constitutions, the permanent and superior part of our law; perhaps that is as far as it really aids the people to express their will in consistent legislation.

In the last two years three amendments have been introduced by initiative which show that the referendum may become a powerful socialistic weapon. The slaughtering amendment was in effect directed against a class, and was successful; the amendment assuring employment was in the interest of a class, and was lost; the pending amendment for a distribution of money to the cantons is directed by poor cantons against rich ones. Against all these propositions the assembly has set itself steadfastly. "I am a friend of the referendum," says an eminent member of the executive council, "but I do not like the initiative." The experience of Switzerland seems to show four things: that the Swiss voters are not deeply interested in the referendum; that the referendum is as likely to kill good as bad measures; that the initiative is more likely to suggest bad measures than good; that the referendum leads straight to the initiative. The referendum in the United States would therefore probably be an attempt to govern great communities by permanent town meeting.

Nation. 74: 364-5. May 8, 1902.

Municipal Referendum.

To the Editor of The Nation:

Sir: Students of local government in America find much interest in an ordinance passed March 4 last by the village council of Winnetka, Ill., which establishes the referendum principle in matters relating to corporate franchises and the issue of bonds payable out of the municipal treasury. Additional significance is attached to this movement because of the fact that the village is a suburb of Chicago, inhabited largely by persons doing business in that metropolis. One need scarcely be reminded, moreover, of the dual system of local government that has long obtained in Illinois. The New England people who settled the northern part of the state brought with them the plan of town government, with its democratic ideals and possibilities, while southern Illinois with its county system, still reminds one of the influence of Virginian colonists. The "town meetings" accordingly gave Winnetka voters opportunities for discussing all matters affecting the general welfare of the community. No less fortunate has been the elimination of party lines in questions of local importance. Hence, in point of fact, long before the adoption of the ordinance in question the citizens enjoyed not only the right of having certain important questions decided by popular vote, but the right of initiating legislation as well.

This combination of the referendum and the initiative appears to have worked satisfactorily so far. The village now owns its own water plant and lighting equipment, and, through its village council and other local boards, is governed by its best citizens, who serve without compensation. One of the most influential of these says that he thinks "Winnetka is the best governed municipality in the country." The following excerpt from the recent ordinance prescribing the methods of local legislation in Winnetka may therefore prove of some value to those interested in the subject:

"1st. Before the passage of any ordinance, the council shall order such ordinance engrossed by the village clerk in the proper book and posted in three of the most public places in

said village, to-wit: On the village bulletin board on Elm Street, just east of the C. & N. W. R. R. tracks, on the village bulletin board on Oak Street, just west of the C. & N. W. R. R. tracks, and on the village bulletin board near the Lakeside Depot.

"2d. Any ordinance which shall grant or create any franchise or franchises, or valuable rights, or provide for the issue of bonds payable out of the general funds of the village other than the issue of bonds for the payment or retirement of existing bonds, shall be submitted to the legal voters of the village prior to its passage.

"3d. No ordinance shall come before the council for passage until five days after the posting of the same, and if prior to the expiration of said five days a petition signed by at least fifty of the legal voters of the village be presented to the village council requesting that such ordinance be submitted to a vote of the people, then it shall be the duty of said council to so submit said ordinance as hereinafter provided.

"4th. No ordinance which shall have been submitted to a vote of the people in accordance with the above provision shall come before the council for passage until the result of said vote has been declared in open council.

"5th. If said vote shall consist of a majority of the registered votes at the last village election, then it shall be the duty of the council to abide by the decision thereby expressed.

"6th. When an ordinance comes up for passage, it shall be again read before the council, and a yea-and-nay vote taken on the same.

"Section 4. The passage of any ordinance shall require the concurrence of a majority of all the trustees elected.

"Section 5. All ordinances shall, within one month after they are passed, be published by the clerk, posting copies of the same for five days in three of the most public places described in clause 1, section 3, of this ordinance.

"Section 6. The manner of referring any ordinance to the citizens, unless otherwise requested by petition signed by at least fifty of the legal voters of the village, shall be as follows:

"A printed copy of the ordinance shall be mailed by the village clerk to each registered voter of the village, with a numbered blank on which the voter can register his vote over his signature. This to be filed with the village clerk within five days after having been so mailed, but the seals to be broken and the result declared only in open council at its first meeting held after the expiration of said five days."

It ought to be added that the population of the village is about 2,000 and that the Winnetka system, so to speak, grew out of an attempt made some years ago by the village trustees to grant a forty-year franchise to a local gas company.

Respectfully yours,

B. J. Ramage.

New England Magazine, n. s. 9: 563-8. January, 1894.

Swiss Referendum. Nathan N. Withington.

The principle of the referendum is as old as the Swiss nation, the word coming from the usages of the old federal

diets, in which the delegates did not decide matters themselves, but voted *ad referendum*, and submitted their actions to the home governments. The power to veto an ordinary law made by representatives was established for the first time in modern days in 1831, in the Canton of St. Gallen. It was a compromise between the party which wanted to establish pure democracy and the party of representative government. It is, however, only the same old Swiss voter of centuries ago telling his member of the diet to conclude nothing important without his consent. The demand of 50,000 electors to amend the constitution, or to repeal or to modify an existing law, or the popular initiative, came almost necessarily from the referendum. In every cantonal constitution except that of Freiburg the right of the people to have all important legislation subjected in some form for popular approval or rejection is recognized. While general assemblies of the people in the cantons to make the laws fell into desuetude, popular franchise and complete freedom of election were not enough to satisfy the democratic proclivities of the Swiss. They were still jealous of the plenary powers of their delegates, and insisted that their deliberations when formulated into laws should be referred to the sovereign people. Previous to the French Revolution the government of the different cantons had fallen into the hands of a limited number of aristocratic families. The laboring classes were crushed under enormous burdens by the nobility in the rural districts, and by the rich *bourgeoisie* in the cities. The period of reaction following the Napoleonic era was unfavorable to the development of popular institutions. Since the cantonal revolutions of 1830 there has been a general return to the principle known as the referendum; and after the federal constitution of 1848, by which the constitution of a canton could only be revised on the demand of a majority of the citizens, the policy of extending the principles of the referendum to its fullest limits rapidly grew in favor.

There are two forms of referendum existing in the cantons, compulsory and optional: the one requiring the reference of every law passed by the great council before it acquires validity; and in the other a discretionary power of reference

is reserved to the people. The first is regarded as the more practical and satisfactory; the chief objection to the latter being the agitation occasioned in procuring the necessary signatures, producing excitement, diverting the thought of voters from the real question at issue, and thus giving an undue bias to public opinion, and a character of partisanship to the resulting referendum.

The number of signatures required in the optional referendum varies, according to the size of the canton, from five hundred to one thousand voters, and the time within which it must be made, is usually thirty days from the passage of the law and its official publication. The compulsory referendum exists in the seven cantons of Zurich, Bern, Solothurn, Grisons, Aargau, Thurgau, and the Valais, and in the rural half-canton of Basel. In Schwyz and Vaud both forms obtain. In Zurich a popular vote must be taken upon all changes in the Constitution, new laws, concordats, and the appropriation of an amount exceeding 250,000 francs, or an annual expenditure exceeding 20,000 francs. The power of the cantonal council of Zurich is further limited by the initiative. Any voter if supported by one-third of the members present at its next sitting, or any 5,000 votes, may demand the passing, alteration, or abolition of a law or of the decision of the council. The optional referendum exists in the seven cantons of Lucerne, Zug, Schaffhausen, St. Gallen, Ticino, Neuchatel, Geneva, and the urban portion of Basel. Generally speaking, laws, concordats, and sometimes resolutions of cantonal councils, are submitted to optional referendum. It exists for financial matters, in different gradations in other cantons, from 500,000 francs in Bern to 50,000 francs in Schwyz. The initiative as to revision of the constitution prevails in all the cantons upon certain conditions, and the demand of voters varying from 1,500 to 5,000, with the exception of Bern and Valais, where there is no initiative. Freiburg is now the only canton in which the sovereignty of the people is not thus directly exercised; all the others, with the exception of those where there is still a Landesgemeinde, possess either a compulsory or an optional referendum; and in two instances both. A few cantons have

introduced an imperative initiative, by petition from a fixed number of voters, demanding action upon a certain matter by the cantonal council; whereupon the council must take a vote upon it, and then submit it to a popular vote, even if the action of the council upon it has been unfavorable.

Such is this remarkable feature of the Swiss constitution. Would it be desirable to adopt it in our own system of government? Ex-Minister Winchester, whom I have already quoted, thinks highly of the referendum, as do many others. It serves, they urge, as a guarantee against precipitate legislation; it forms a safeguard against the hastiness or violence of party; it is a check on popular impatience; it tends to produce permanence in the tenure of office; it is the only check upon the predominance of party which is at the same time democratic and conservative; and it proves that, as a rule, the people are not favorable to legislation. If the *laissez faire* principle is the true one in government, then these commendations are just, and it would be a good thing to adopt the referendum into our own polity. But in our own political history is it not to be said that when there has been anything imperatively necessary to be done, the work has had to be undertaken by leaders who were in advance of public opinion, and by a party which could not be said to be the popular party? The people would never by the initiative have demanded the adoption of the federal constitution. It was urged upon them by leading men far in advance of popular opinion, who had a difficult task to induce the legislatures of the states to adopt the constitution. Probably it never would have been adopted by popular vote. In Massachusetts, as in other states, a considerable majority of the citizens were opposed to it. Furthermore, the Federalist party soon fell into disrepute, and was succeeded in power by the Republican Democratic party, which held that power for a long period, and whose acknowledged principle was to do nothing by the government which could be done by the people. In a republic, as under every other form of government, constructive legislation, any policy of progress and advance over established customs and institutions has to be the work of the few, the exceptional men of ideas

beyond those of the multitude. They must not be too greatly in advance, or they could not make themselves effective in operation; still the growth of institutions is directed and effected by the few, and these can better influence and guide select representative men than they can whole populations. The arguments urged in favor of the referendum are mostly of the same kind, that it is a check upon legislation. But do we need more checks upon legislation? Do we not need more legislation, rather than less? If the *laissez faire* principle, which was held to be orthodox political doctrine in this country and in England forty years ago, is sound, then the referendum would be an excellent thing in our country; but if the present tendency of political speculation is not mistaken, is there not more hope for growth and progress in representative government? Let us by all means consider the subject of the referendum carefully, since it has now been brought prominently to the front in this country; but in considering it, let us seriously ask ourselves this question.

New England Magazine, n. s. 11: 448-59. December, 1894.

Swiss Solutions of American Problems. William D. McCrackan.

Politics would be the simplest thing in the world, if it were not for the politicians. Principles would displace personalities on election day, if it were not for rival partisans with their quite irrelevant mutual accusations. People would learn so much more about the laws which govern them, if they were not wholly engaged in guessing at the intentions of their law makers.

Given a body of freemen,—and freewomen too, of course,—how will they naturally go to work to govern themselves? It is evident that they will meet periodically to settle matters of common interest. They will probably adopt a set of rules to govern their proceedings. They will elect officers to look after their interests while they are not in session. Everybody will have an equal right to propose measures and to vote upon them. This is the method to which freemen naturally resort, the

world over. We Americans invariably organize upon this principle, whether it be to found a state or a debating club. We have a natural fondness and aptitude for direct government, for pure democracy.

As far as I am aware, however, only two political examples of this ideal form of government have survived the wear and tear of the centuries,—in Switzerland, the open-air assembly known as the Landsgemeinde; in this country, the town meeting, wherever practised. Everywhere else, direct law-making by the people themselves has been superseded by the representative system.

Imagine a meadow in Switzerland, near Altdorf, the village which is associated with the legend of William Tell. It is the first Sunday in May. The spring flowers show through the rising grass or along the walls and hedges. Fruit trees are everywhere in blossom. A breath of infinite exhilaration comes from the surrounding mountains. The voters have marched out from Altdorf in procession, according to immemorial custom, and now range themselves upon a wooden stand, built for the occasion, in the shape of an amphitheatre, about 2,000 men in number. The chief magistrate stands in the center delivering an opening speech. The clerk sits writing at a table, and the crier with his beadles, resplendent in cocked hats and cloaks of orange and black, is installed upon a raised platform on one side. A fringe of women and children watch the proceedings from near by. The annual Landsgemeinde, or open-air assembly, of Canton Uri is in session. Suddenly the crowd rises, and, standing bare-headed silently repeats a number of *Ave Marias*. During this solemn pause, the surpassing grandeur of the surroundings imposes itself.

All at once the business of the meeting begins. Bills and reports are presented, discussed in the guttural native dialect, and voted by a show of hands. Then comes the election of officers,—each result being announced by the crier, who raises his hat and repeats a set formula. After the oath has been administered to the new magistrates, some miscellaneous business is transacted, and the assembly adjourns till next May. The session has lasted about four hours.

Simple and prosaic as this political act may seem, one turns from contemplating it with the feeling of having witnessed a religious rite. These rude peasants are more truly sovereign than any crowned ruler, and their assembly, though sprung from a seed planted in the dawn of recorded history, is neither antiquated nor outworn, but filled with the spirit of perennial youth.

It was attending this assembly in 1888 and 1889 which inspired the writer to study the principles of direct government; for he realized that there was something in the Landsgemeinde which was not merely Swiss, but which answered to the aspirations of mankind in general. A book is called a classic because it appeals to qualities in human nature which are permanent and belong more or less to every age and every clime. In this sense the Landsgemeinde is a classic among forms of government, for it is the expression of pure democracy for which humanity has always striven and will always strive.

In the United States, the Massachusetts town meeting is almost the exact counterpart of the Swiss Landsgemeinde, in spite of an entire difference in environment. You have only to substitute a hall for a meadow, the bleak, unkindly scenery of a Massachusetts March for the genial glow of an Alpine May, and a good deal of nasal Yankee dialect for guttural "Schwizerdütsch." Selectmen and committees make their reports about schools, fire departments, streets, sewers; and one is impressed with the natural instinct of freemen for the orderly conduct of legislative business. There is, too, an intense relish for good rhetorical points. The town meeting is a school of oratory. Local lawyers take perhaps an unfair advantage of this to practise on their friends. The Yankee is capable of filling even a report on drainage with dry humor. Occasionally the moderator finds it necessary to reprimand applause as indecorous, or to beg voters not to leave the room when discussion is tame. Voting is done *viva voce* unless it is close, when the ayes or nays rise to be counted by the clerk.

As the Landsgemeinden were the training schools for the peasants who founded the Swiss republic, so the New England

town meeting taught political organization to the patriots of the American Revolution.

Now to return to our imaginary body of freemen, with whom we began our investigation into the natural methods of self-government. The chances are that a body of freemen will continue to govern themselves directly until population and territory have increased so much, that it becomes a physical impossibility for them to meet personally. Then direct democracy gives place to a representative system of government. The people cease to exercise their sovereign rights in person; they are gradually weaned from self-government, and the professional politician makes his appearance. This is the critical moment in the history of every democracy.

Is it safe to have our laws made for us by proxy, as the Chinese hire performers to do their dancing for them? The process of transformation from direct to representative government is natural and inevitable. But is there not a kind of dancing we have a right to do for ourselves, especially as we pay the piper? We may be willing to leave the ballet and the more intricate features of skirt dancing to experts; but we like to do our own waltzing, and very few of us find any pleasure in watching others taking all these pretty and easy steps which have become the fashion of late. We prefer to be on the floor ourselves, until we get quite old and no longer go to parties. In other words, when the people surrender direct government, must they also lose the power of proposing measures and voting upon them as before?

Happily, a way has been found of escaping from this predicament. It is possible to preserve the essence of the public assembly—its directness—even in the midst of our complex modern civilization. The honor of this discovery belongs to the Swiss people. They have perfected a contrivance in political machinery, which virtually annihilates space in a political sense, for it enables large bodies of voters to govern themselves directly without actually meeting together. They have grafted the institutions of the initiative and the referendum upon the system of representative government. They have saved pure democracy from extinction.

One may perhaps regret that we have no simpler, Anglo-Saxon names for these institutions; but they are borrowed from the Swiss, and it is too late to make any change. Besides they are not really so bad, after all. The initiative means that a certain percentage of voters can *initiate* or propose legislation; the referendum, that such propositions must be *referred* back to the people for final acceptance or rejection. It is exactly as though some person rose at any meeting, handed the presiding officer a written proposition, with signatures of a certain percentage of those present attached,—that would be the initiative. Then if he examined this proposition, as an expert in the legislature, and put it to the vote of all those present,—that would be the referendum.

To illustrate the actual process in Switzerland. Suppose a group of voters there are interested in a certain reform,—whether it concern the municipality in which they live, or the canton, or the federal government, whether it be a question of lighting the streets, improving the schools, or changing the currency,—they first draw up a petition, either in the form of a finished bill or a general suggestion. If the petition receives the number of certified signatures required by law, it is carried to the legislature by means of the initiative. The representatives must pass judgment upon it within a specified time, and refer it back to the people for final acceptance or rejection by means of the referendum. They may, of course, move its rejection, or submit an alternate proposition of their own, side by side with the original petition.

This is the town meeting over again, adapted to a wider field,—that is all. How long, under the beneficent working of direct legislation, could the Tammany tiger keep its claws fastened in the flesh of New York? The initiative and referendum would give that beast one thrust in the ribs, which would make it harmless ever after.

Contrast with this straightforward Swiss system of making laws the methods which are in vogue in the United States. Take any measure in which a group of practical reformers are interested. We will say, for the sake of illustration, that a committee of ladies and gentlemen in some large city of this

country are agitating the question of putting electric wires underground. Everybody knows the unsightliness of these wires strung along our American streets on monster poles. Visiting foreigners stand before them in amazement, and note them down as evidences of picturesque barbarism on our part. Everybody knows that these wires are the direct cause of much loss of life every year in case of fires. The firemen cannot get at the burning houses properly; they come into contact with deadly live wires, and the people they are trying to rescue hang entangled in the meshes, charged with electricity. After every great storm, telegraphic communication is broken between great commercial centers, involving losses of hundreds of thousands of dollars to business men and perhaps many a heartache to friends and relatives.

Now, what are the committees of ladies and gentlemen going to do about it? They have public opinion with them; but the telegraph, telephone, electric car and other companies with vested interests are ready to fight them to the bitter end. It would cost money to put the wires underground. The companies agree that that money had better be used for dividends on watered stock than invested in works of public benefit. The committee draw up a petition, and present it to the board of aldermen. The aldermen pass it round at one of their meetings, and unite in saying that they don't see anything in it for themselves personally. The petition is put on the shelf. At the next election the committee organize a citizens' ticket, in order to elect a board of aldermen pledged to put the wires underground. They manage to marshall quite a respectable minority to the polls, but find when the result is announced that minorities do not count in politics,—that our electoral system is so contrived that great numbers of voters are practically disfranchised at every election either by the district system, or by that delightful game of the astute politician known as the Gerrymander, or by any one of a number of tricks in which the ward heelers find pleasure and profit.

But suppose, for the sake of argument, that the citizens' ticket *has* elected an alderman pledged to put the wires underground, if he can. He proposes the measure to his colleagues,

picturing in harrowing details the danger of life and property now incurred. There is no certainty that his bill will even be noticed, much less discussed, or that, if it is discussed, it will not be promptly tabled as soon as the electric companies hear of it. A word spoken at some hotel bar by the corporation lawyer of one of these companies, a hint at certain valuable services to be rendered, a little transaction in greenbacks, have more influence than the express desire of ten thousand sovereign voters. The only way to influence the typical alderman in the direction of any reform is to persuade him that there is danger of his not being reëlected, if he disregards your warnings.

Once more the committee go to work. Perhaps there have been a series of terrible accidents recently, line men have been seen burning alive at their work, before the eyes of a horrified and helpless multitude. The public is thoroughly roused. A mass meeting is held, at which resolutions are passed, condemning the board of aldermen and demanding that they put the wires underground. But these magistrates are not in session just then; they have adjourned for a well-earned recess; they are off on a trip, representing their native city, delivering patriotic addresses, and spending the taxpayers' money; they are going to be away until the storm is over. Everybody's business is nobody's business. The agitation smoulders for a while, so that when the aldermen return it is no longer very formidable. The committee find the worthy gentlemen solemnly engrossed in a conspiracy of silence. They are the most non-committal men in the world; but, of course they will look into this question if the people so desire. In a year's time a vague report may be expected if public opinion is kept up at fever heat; otherwise the subject is simply dropped, dropped heavily and unmistakably into a wastepaper basket; and, incredible as it may seem, at the next election either the same aldermen, or their friends, are reëlected. They hold an undisputed control over the electoral machinery of the city; and when they have had enough boodle, they retire and race horses. Is it not enough to make one despair? At all events, the committee of ladies and gentlemen lose heart and wash their hands of

the whole business. But the terrible part of it all is that even if the citizens of this imaginary, long-suffering city should succeed in electing a majority to the board of aldermen, pledged to put the wires underground, there is still the mayor to reckon with. He may veto the whole project on the score of some technicality. If he is unscrupulous, if he wants to make his everlasting fortune in one day, he can arrange a quiet little deal with the electric companies, by which, in return for value received, he will undertake to fix a few aldermen, enough to change the vote of the board. There are endless ways of blocking or diverting the will of the people, and the American politician knows them all.

Of course there is no reference to any particular city in this illustration. It is a purely hypothetical case, and an extreme one. No specific board of aldermen is accused, no special mayor. But such things have happened in the past, are happening now, and will happen in the future, as long as the people are divorced from making the laws which govern them. It has become almost a commonplace assertion, that our politics have become as bad as bad can be. What is true of our municipalities is true, though in a less measure, of our state and federal governments. They have ceased to be democratic in the Greek sense of the word. Our whole difficulty lies in this: that we do not live up to our professions. We must find relief from the tyrannies of our legislatures. Modern parliamentary institutions, in so far as they have set up barriers between the people and legislation, have departed from their real function, which is to take the propositions emanating from the people and, having examined them, to suit them to the peculiar requirements of the case, then to return them to the people for acceptance or rejection. Representatives may formulate laws, but the people must ratify them.

What has been the result of the introduction of the initiative and referendum in Switzerland? How does direct legislation work in the little sister republic?

The effect has been most gratifying in every way. At the end of the last century and the beginning of this, Switzerland had sunk to the lowest stage of political corruption in its his-

tory. It was a nest of oligarchies, intrenched behind vested monopolies. Outside of the Landsgemeinde cantons, the people were far worse off politically than they are in this country. But in 1831, after much agitation, the referendum was adopted by the Canton of St. Gallen. In 1845 Canton Vaud experimented with the intiative. Since those dates other cantons have incorporated these institutions into their constitutions, one by one; finally the federal government itself quite recently capped the climax by admitting direct legislation into the conduct of its affairs. Switzerland has thus placed herself in the forefront of all democracies, while we of the greater republic must acknowledge with humiliation that we have been completely distanced by her in the race for pure politics.

Contrary to the expectations of many sinister prophets, direct legislation has proved distinctly conservative instead of revolutionary; in fact, the extraordinary caution and fear of innovation displayed by the voters might almost be made a cause of reproach to the system,—for, out of seventeen bills submitted by the referendum between 1874 and 1884, no less than thirteen were rejected by the people.

Moreover, second houses such as our senate tend to become superfluous, and if the initiative and referendum were thoroughly applied would doubtless be abolished altogether. The people constitute a second house, in which every bill must find its final verdict.

It must not be supposed for a moment that direct legislation is altogether a new-fangled, foreign importation. Few people realize how firmly its principles are rooted in the political life of the United States. The Massachusetts town meeting is as good an example as we could wish to find. Our forefathers brought these ideas with them from England, long before Anglo-maniacs were dreamed of, before English dog-carts were the fashion here, or even before English dukes married American girls for their money. Direct legislation is as much at home on the New England coast as in the Alpine valleys of Switzerland. Moreover, every state in the Union, except Delaware, submits constitutional amendments to popular vote. The constitution of Massachusetts enunciates the rudiments of the

initiative, when it declares: "The people have a right in an orderly and peaceable manner to *give instructions* to their representatives." Local option is a form of the referendum. Two rapid transit bills and an aldermanic bill have been referred to the people of Boston at recent elections.

What is needed now is to systematize these occasional expressions of the popular will, to make them flow in regular constitutional channels, by means of the initiative and referendum. Above all things, the tendency to convert the towns into municipalities must be checked until the people can be guaranteed their old-fashioned rights of proposing and ratifying their own laws.

How these reforms are to be introduced—whether by special bills or by constitutional amendment—is a matter of secondary importance. Public sentiment must first be strongly roused in their behalf, and the way will be easy.

North American Review. 177: 78-85. July, 1903.

Constitutional Initiative. Lucius F. C. Garvin.

Owing to a widespread dissatisfaction with the action of legislative bodies, a strong demand for pure democracy is sweeping over the country. Finding that the representatives of the people, whether municipal, state or national, can be trusted neither to carry out the popular will, nor to formulate their own convictions into law, on every hand is heard the cry for direct legislation, or the initiative and referendum, as termed in Switzerland, the place of its birth. The force of this sentiment is illustrated by recent events in the city of Chicago. The state of Illinois recently passed a law allowing a municipal referendum when petitioned for by twenty-five per cent. of the qualified electors. This extraordinarily large percentage, calling in Chicago for the names of more than 100,000 voters, and supposed to be prohibitive in so large a city, was exceeded by many thousands of signatures.

At the election held on April 1st, 1902, the vote stood thus:

"For ownership by the City of Chicago of all street railroads within the corporate limits of said city..... 142,826
Against 27,998

Majority (5 to 1 in favor) 114,828

"For ownership by the City of Chicago of the gas and electric lighting plants, said plants to furnish light, heat and power for public and private use..... 139,999
Against 21,364

Majority (6 to 1 in favor)..... 118,635

"For the nomination of all candidates for city officers by direct vote of the voters at primary elections to be held for that purpose..... 140,860
Against 17,654

Majority (7 to 1 in favor)..... 123,206"

This was from 75 to 90 per cent. of the aldermanic vote at the same election.

On November 5th, 1902, the voters of Illinois expressed their opinion upon three other questions referred to them.

The vote of Cook County, including Chicago, was as follows:

For state referendum 170,616
Against state referendum 27,244

Majority (7 to 1 in favor)..... 143,372
For local referendum 164,529
Against local referendum 25,960

Majority (7 to 1 in favor)..... 138,569
For popular election of senators 172,211
Against popular election of senators 25,930

Majority (7 to 1 in favor)..... 146,281

THE TOTAL VOTE

in Illinois was as follows:

For state referendum	428,932
Against state referendum	87,655
Majority (5 to 1 in favor)	341,277
For local referendum	390,972
Against local referendum	83,377
Majority (5 to 1 in favor)	307,595
For popular election of U. S. senators	451,319
Against popular election of U. S. senators	76,975
Majority (6 to 1 in favor)	374,344

All this goes to show the intense interest in and approval of municipal referendum in the second city of the United States.

Another and perhaps stronger indication of the popularity of direct legislation is the practically unanimous support given to it by organized labor. The American Federation of Labor, under the leadership of Samuel Gompers, after advocating the initiative and referendum for a decade, has recently issued a large extra number of its official magazine, "The American Federationist," devoted exclusively to this subject, under the title "Majority Rule in Combination with Representative Government."

Against the people's initiative in constitutional amendment, no valid or even plausible objection can be raised. An American constitution is the people's law, and the qualified electors should possess precisely the same power to make and unmake it that the legislature has to make and unmake statute law. In both instances, deliberation and simplicity are highly desirable and should be required. They are carefully provided for in both the Massachusetts and Rhode Island amendments.

It will be observed that both amendments restrict popular propositions of future amendments to a single and specific subject matter. This seems to be a conservative and wise provision, and might well apply to all constitutional amendments,

however proposed. A complex amendment, dealing with two or more unrelated topics, places before very many voters the alternative of voting for the part which they disapprove, or against the part which they approve. As a matter of fact, bad provisions have been sandwiched in with good ones to such an extent that, in order to get the reforms needed, very objectionable sections have been added to many state constitutions. It is for a similar reason that every new constitution is in some respects inferior to the one which it supplants.

But, with a single subject matter placed before the people for their acceptance or rejection, it can and will stand or fall upon its merits. In this way will be insured a gradual and natural growth of the fundamental law of a state, far more safely and satisfactorily than the distorted and halting progress which proceeds from constitutional conventions held at intervals of many years; although occasion may arise for the appointment by the people of such a special committee, whose duty it shall be to revise the entire instrument and to report the result of its deliberations to the body politic.

The monopolizing by the legislature of the highly important function of proposing amendments to the constitution gives to that body, which is but a committee of the electorate, the power to say to its creator: We will decide for ourselves whether any changes shall be made in our powers and duties, and what those changes shall be. Although this remains the situation in nearly every state, it is both irrational and absurd, and finds no parallel in non-political organizations. It is in direct antagonism to the American theory of republican government, which historically embraces not merely representation of the people in a legislative body, but, primarily, the control of the organic law by the entire electorate.

The statement of this latter fact is to be found in the bill of rights of every state constitution. The Massachusetts constitution, for instance, contains these words [Article I, Part VII]:

"The people alone have an incontestable, inalienable and indefeasible right to institute government, and to reform, alter and totally change the same when their protection, safety, prosperity and happiness require it."

In like manner the Constitution of Rhode Island begins [Article I, Section I]:

> "In the words of the Father of his Country, we declare, that 'the basis of our political systems is the right of the people to make and alter their constitution of government.'"

Although the correct principle has thus been set forth from the beginning, it was not fully applied in any state prior to 1898, when South Dakota adopted the initiative and referendum amendment. It is true that the constitutional referendum existed from the first, and continues almost intact up to the present time; but the other half of direct legislation has been wanting, and remains to be conferred by the adoption of the constitutional initiative. The reasonableness of such initiative appears when the degree of control over the organic and the statute law is compared. The legislature has power not only to enact, amend and repeal, but also to accept or reject propositions of any kind presented to it by a very small minority of its members. A constitutional amendment, a law or a resolution, may be brought before either branch of a legislature by any two members. In fact, any one senator or representative may introduce a proposition and bring it to vote by his fellows, provided he can get another member to second his motion —a mere matter of form, which, indeed, is frequently ignored or assumed by the presiding officer.

But how has it been with the body politic in the matter of amending the organic law? No minority of the people—nor, for that matter, a majority, however large—could propose an amendment to the state constitution. The people have been situated just as a legislative body would be if no one but its presiding officer had the power to present a bill or resolution for its consideration. In that event, any member, and indeed any number of members which did not include the presiding officer, would be wholly dependent upon his will for the making of changes in the statute book. No legislature, no town meeting, no society, no casual gathering for the transaction of business—in fine, no organization other than the body politic—can be found with its powers thus limited. No doubt the early constitution-makers believed that legislatures could be trusted to submit to popular vote any amendment desired by a

considerable portion of the people. But in this they were mistaken. Experience has proved that a legislature will propose an amendment wanted by its own members, but will utterly refuse to submit matters for which the strongest and widest public demand is known to exist. To this limitation of the power of the people over their organic law may be traced the absence from our state constitutions of provisions adapted to making legislative bodies genuinely representative, to abolishing government by lobby, and to doing away with misrule in cities.

With the constitutional initiative established in any state, its people will have just as good government as they are capable of—or, as Professor Richard T. Ely puts it, "as good legislation as they deserve." Under present conditions the people do not get their deserts politically—indeed, they fall far short. They are now the sport of selfish influences which for any private purpose may wish to make use of the legislature against the interests of the public. Consequently, a large share of produced wealth is diverted from the many who earn it, and, in the form of special privileges, is bestowed upon the few who manipulate legislation.

Our forefathers, in forbiding any change of a state constitution save by a vote of the people, set up for our liberties a mighty defence. It devolves upon the states which love liberty to round out the work of our ancestors by making a full application of the most vital principle asserted by them. To the constitutional referendum which they evolved, it remains for us to add the popular initiative, thus giving to a majority of the body politic complete control of the people's law, the constitution of the state.

North American Review. 185: 69-74. May 3, 1907.

People as Legislators. Charles W. Fulton.

The state government of Oregon more nearly approaches a pure democracy than does that of any other state of the union. This is due to the amendment to its constitution adopted by

vote of the people in 1902, and known as the "Initiative and Referendum Amendment."

Under this provision, the "power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly," is reserved to the people. It is provided that eight per cent. of the legal voters may, by petition filed with the secretary of state, propose any measure desired. It is required that the petition shall include the full text of the law, and be filed not less than four months prior to the election at which the proposed law is to be voted upon. If approved by a majority of the votes cast, the measure immediately becomes a law and is not subject to the governor's veto. Such is the initiative.

The referendum may be applied to any law enacted by the legislature, except such as are "necessary for the immediate preservation of the public peace, health or safety." It may be ordered by a petition signed by five per cent. of the voters, or by the legislature itself. When ordered, the measure to which it is directed does not become a law until it has been approved by a majority of the votes cast thereon.

Thus it will be seen that, excepting such constitutional limitations as are imposed on the legislative power and apply to the legislature as well, there is no limit whatever to the right or power of the people to legislate by direct enactment independently of the legislature, and but slight limit to their power to veto laws enacted by the legislative assembly.

The first exercise of the power to initiate and enact legislation by the people was at the June election in 1904, when, by a vote of more than three to one, they enacted the direct primary law, whereby all nominations of candidates for public office, excepting school-district offices, and municipal offices in towns of less than two thousand inhabitants, are required to be made by direct vote of the people.

An important and interesting feature of the direct primary law is that it expressly provides for the nomination of candidates for United States senator. Provision is made for placing on the official ballot to be used at the election following the primary the names of all nominees, including names of nomin-

ces for senator. It is also provided that a candidate seeking a nomination for the legislature may file in a designated office one of two statements. One of these statements is in the following terms: "I will, during my term of office, always vote for that candidate for United States senator in Congress who has received the highest number of the people's votes for that position at the general election next preceding the election of a senator in Congress, without regard to my individual preference." This is known as "Statement No. 1." Statement No. 2 is: "During my term of office, I shall consider the vote of the people for United States senator in Congress as nothing more than a recommendation, which I shall be at liberty to wholly disregard if the reason for so doing seems to me to be sufficient." If a candidate shall decline to sign either statement, his name must, nevertheless, if petitioned for, be placed on the nomination-ballot.

The first nominating election under this law occurred in April, 1906, to nominate candidates to be voted for at the general election to be held in June of that year. A senator in Congress was to be chosen by the legislature then to be elected. A very considerable majority of the candidates for the legislature signed Statement No. 1, and when the legislature was elected it was found that signers of that statement constituted a clear majority on joint ballot. The result was that a United States senator from Oregon was, for the first time in many years, elected on the first ballot. It was, indeed, a most welcome change, for so bitter had been the factional differences in the Republican ranks in Oregon during the preceding twenty years that people had ceased to expect an election of a senator to occur before the last ballot on the last night of the session; and it was always possible that there would be no election, as indeed was the case in two instances.

During the short period of time in which the initiative and referendum amendment has been a part of our constitution, the people have manifested a very lively disposition to exercise their power thereunder. They have, however, evidenced a conservatism and discriminating judgment both in legislating and in reviewing the work of the legislature which demonstrate that

such powers may be vested in them with perfect safety to all interests.

Aside from the direct primary law, the most important enactment under the initiative is the local option law, which was proposed by petition and approved by a large majority of votes cast thereon, and thereby became a law.

The general appropriation bill enacted by the legislature at the January session in 1905, was, by petition, held up under the referendum, and referred to the voters and passed on by them at the June election in 1906. By a very decisive majority, the action of the legislature was approved.

So far there has been no attempt to enact unusual or extreme legislation on any subject under the initiative. On the contrary, our experience thus far tends to indicate that, as legislators, the people are fully as conservative and considerate of private and corporate rights as are their representatives in legislative assemblies.

North American Review. 185: 202-13. May 17, 1907.

Referendum and Initiative in Switzerland. M. W. Hazeltine.

Direct popular voting upon cantonal *laws* (as distinguished from constitutional amendments) made its first appearance, under the name of "veto," in the Canton of St. Gall in 1831. The essential difference between the veto and the modern referendum consists in the fact that, in the case of the latter, the fate of a law is determined by the majority of the votes cast, whereas in the case of the veto a law was deemed rejected only when a majority of all the voters registered voted in the negative.

The veto was adopted by Rural Basle in 1832, by the Valais in 1839 and by Lucerne in 1841. In 1842 the Great Council of Zurich refused to introduce it, but it was adopted by Thurgau in 1849 and by Schaffhausen in 1852. These were the last cantons to take up the so-called veto, which is pronounced by Mr. Lowell a clumsy device, ill-adapted to ascertain the real opinion of the people. Subsequently, it began to be replaced by a more perfect instrument, the modern referendum, which

in Switzerland is of two kinds, one called the "facultative" or "optional," where a law passed by the cantonal great council must be submitted to popular vote if a certain number of the canton's citizens petition for it; the other is termed the "obligatory," because it requires *all* cantonal laws to be submitted, whether or no any petition to that end has been presented. The obligatory form of the referendum is plainly the most purely democratic, and in Switzerland it is considered preferable also on practical grounds, because it avoids the agitation required for the collection of signatures to a petition.

The first form of the modern referendum to be adopted in Switzerland was the obligatory. The incident took place in the Canton of Valais in 1844; twelve years later a general optional referendum was adopted in Soleure, and two years afterward Neuchâtel established an obligatory referendum for large appropriations of money, a move which was imitated by Vaud in 1861. The example of these cantons was presently followed by others, until now all of them, except the strongly Catholic and reactionary Freiburg, possess a referendum of some kind for ordinary laws, about half having the obligatory and about half the optional form. In all cantons the referendum is compulsory for changes in a cantonal constitution.

By the Constitution of 1848, revised in 1874, the Confederation also made the referendum obligatory for all constitutional amendments, and in the year last named it adopted the referendum in the optional form, providing that, on the demand of 30,000 citizens, or eight cantons, all federal laws and resolutions having a general application should be submitted to popular vote for ratification, unless the federal assembly should declare the matter too urgent to admit of such delay. As the constitution nowhere defines a law or a resolution of "general application," the power of definition is left to the federal assembly, and its use of that power has given rise to some complaint. We should mention that in order to give time for presenting a petition for a referendum the laws to which it is pronounced applicable do not go into effect until ninety days after they have been passed by the federal assembly. The application of the optional referendum to federal laws has been used freely

by the people: During the twenty-one years following its introduction in 1874 the requisite number of voters petitioned for the referendum in the case of 20 out of 182 laws, to which it was held applicable; that is, to one law out of nine. Of these twenty, the people rejected fourteen and ratified six. It is further to be noted that, during the same period, ten constitutional amendments were proposed by the assembly, and had to be submitted to popular vote. Of these, four were rejected and six accepted.

The federal referendum was first applied in 1875 in the case of a law defining the conditions, such as bankruptcy and pauperism, under which a citizen could be deprived of the right to vote—conditions that previously had been determined by the cantons, and therefore varied in different parts of the country. This act was rejected by a slight majority. On the same day a vote was taken on another law establishing uniform rules of marriage and divorce, and regulating the keeping of registries of births, deaths, etc. In spite of the repugnance of the clause relating to divorce, not only to Catholics but also to conservative Protestants, the law was ratified by a small majority because the provisions about registry were necessary. We observe, next, that in 1877 a federal law regulating labor in factories was ratified by a small majority. During the five years succeeding 1877, the only federal law the submission of which to the people was demanded was the act granting a subsidy to the railroad over the St. Gothard, which was ratified. In 1882, on the other hand, a federal law to prevent epidemics, which contained a clause making vaccination compulsory, was rejected by a vote of nearly four to one. In the same year the assembly passed a law appointing a secretary of education for the purpose of examining the schools, on the ground that the cantons had not obeyed the federal constitution, which declares that all public schools must be such that children of all creeds can attend without offence to their feelings. The Catholics and Orthodox Protestants forthwith raised a cry that the radical majority of the assembly intended to take religion away from the schools. A submission of the federal law to the people was demanded by the requisite number of voters, and

the measure was voted down. In 1884 the optional referendum was invoked for the purpose of rejecting a federal law providing for the transfer of criminal cases from the cantonal courts to the federal tribunal, when the impartiality of the former should be doubtful.

If we turn to the amendments of the federal constitution, in the case of which the referendum is not optional but compulsory, we find that an amendment giving to the Confederation a monopoly of the manufacture and sale of alcoholic liquor was accepted by a large majority in 1885, as subsequently also was a law for carrying it into effect. A constitutional amendment concerning patents was ratified in 1887. In 1890 a constitutional amendment authorizing the passage of a federal law for the compulsory insurance of workmen was ratified by an enormous majority. In 1891 an amendment of the federal constitution, giving the federal government power to establish a national bank, with the exclusive right to issue notes, was sanctioned by the people. Still another amendment authorizing the enactment of a protective tariff for the purpose of exerting pressure on France was ratified. In the same year, on the other hand, a constitutional amendment empowering the Confederation to purchase the stock of the Central Railroad Company was opposed by men who disliked the idea of a great increase in the number of federal officials, or who disapproved of state ownership of railroads. The measure was rejected by an overwhelming majority. In 1894 the people voted against a constitutional amendment designed to give the Confederation power to legislate on labor organization, because it was so broad as to authorize a law compelling workmen to join the trade-unions. It was the opponents of socialistic principles who defeated the measure at the ballot-box. On the ground of opposition to further centralization, a majority was recorded against a constitutional amendment conferring on the Confederation a monopoly of the manufacture of friction matches. Rejected also was an amendment designed to place the federal army more completely under the control of the federal government. The diminution of cantonal authority which this meas-

ure involved was repugnant to all but a few of the largest German-speaking cantons.

The working of the obligatory referendum may also be studied to advantage in the case of the cantons, where it is always applied in the case of amendments of the cantonal constitution. The small size of the vote cast on such occasions has been the subject of criticism. It is alleged that the result of the ballot does not fairly represent popular opinion, because in most cases, the opponents of a measure go to the polls in larger proportion than its supporters, so that the men who stay at home should really be regarded as favorable to the proposed amendment. There seems to be no doubt that, in the cantonal referendum, the citizens stay at home a great deal more than could be wished. In the canton of Berne, only about forty-three per cent. of the voters cast their ballot at the referendum, although sixty-three per cent. of them vote at elections. The proportions of citizens who vote at the referendum varies, however, very much, according to the character of the measure in question; thus, between 1869 and 1878, it ran in Berne all the way from 81.6 per cent. down to 20.2 per cent.

Even at federal referenda, which excite a greater interest, because an amendment either of the federal constitution or of a federal law is concerned, the average proportion of the voters in the Confederation who go to the polls is less than sixty per cent., and, if a majority of the qualified voters, instead of a majority of the votes *cast*, were required for ratification, no law would ever have been ratified. The deduction drawn by Mr. Lowell from these figures is that under no form of government can the people as a whole really rule; for the figures show that, with the most democratic system ever devised, laws are in fact made only by that portion of the community which takes a genuine interest in public affairs. Another objection to the referendum is that the people have not sufficient means of forming a serious opinion on the measures referred to them. It is true that in Switzerland a printed copy of the law to be voted upon is sent to every citizen some time before the vote takes place; but the value of a law cannot be learned from a mere perusal of the text, and no effective method has been de-

vised in Switzerland of giving the people adequate enlightenment concerning the object and bearing of the measures laid before them. In the case of federal laws, the function of exposition is left entirely to the press and to party platforms. In two of the cantons an effort has been made to bring about serious discussion by providing that, when citizens meet at the polls, a debate shall take place before the voting begins. It is noticed, however, that, when the presiding officer asks if any one wishes to speak, no one ever responds. In other words, you can bring a horse to the water, but you can't make him drink. If, however, the question at issue is one of general policy, the people may have, and often do have very decided and rational views about it—a fact which suggests the expediency of confining the referendum to matters on which ordinary men can readily form opinions, and not extending it to subjects with which experts alone are conversant. No such distinction, however, has been made in Switzerland.

Still another objection to the referendum is that it lowers the sense of responsibility on the part of the representatives in the legislature. One would naturally expect a representative to feel less responsibility when his action, instead of being final, is sure to be reviewed by his constituents, as is the case where the referendum is compulsory. An eminent jurist in Berne once told Mr. Lowell that the members of the cantonal legislature would vote for a measure of which they disapproved, relying upon the people to reject it, and that he had known men to vote for a law in the great council and work against it at the polls. There seems to be no doubt that Swiss legislatures have occasionally voted for a measure merely to get it out of the way, hoping that the people would refuse to sanction it. M. Droz, a high Swiss authority, says that the referendum weakens the character of the legislators.

There is abundant evidence that the opinions, both of scholars and statesmen, concerning the value of the referendum, differ widely in Switzerland. Some men extol it as the most perfect institution in theory and practice ever devised; while others decry the principle on the ground that the people are consulted about matters they cannot understand, and that,

consequently, the actual working of the system has been bad. M. Droz, who served almost a score of years on the federal council, had at first a strong admiration for the referendum, but, after long experience of its workings, he became impressed with its defects, and with the abuses of which it is susceptible. He complains that it furnishes a basis for demagogy, and encourages the growth of professional politicians, whose ideas are systematically negative, and who are continually trying to instil into others their own spirit of discontent. On the whole, nevertheless, he concludes that the federal referendum, not only in the compulsory form applicable to constitutional amendments, but also in the optional form applicable to federal laws, has done more good than harm. Mr. Lowell, who himself has made an exhaustive study of the subject, concurs in this opinion. He concedes, of course, that, like all human institutions, the referendum is imperfect; but, in the existing condition of the Swiss representative system, it has supplied, he thinks, a real want, and, so far as it has helped to soften the asperities of politics, it has done a valuable service. There is no doubt that Switzerland is one of the most orderly and best-governed of countries, and to this result, which certainly it has not tended to prevent, the referendum may fairly be supposed to have contributed.

So much for the Swiss referendum, which, of course, has a purely negative effect, merely enabling the people of Switzerland to reject measures passed by their representatives in the federal or cantonal legislatures. The Swiss have felt, however, that the legislatures, federal or cantonal, ought not to have the exclusive right to originate legislation, and that democracy is not complete unless the people also have a right to enact laws directly. The so-called initiative is intended to supply this deficiency. As we have said, the germ of the initiative is presented in the fifth article of our federal constitution, which provides an alternative method of securing a constitutional amendment. The Swiss initiative is a device by which a certain number of citizens can propose a constitutional amendment or a law, and require a popular vote upon it in spite of the refusal of the legislature to adopt their views. The initiative was

first adopted by the Canton of Vaud in 1845, but now all the cantons except one possess it for revision of the cantonal constitution; and all but three for ordinary cantonal laws.

In the federal constitution of 1874, as in that of 1848, the initiative existed only for constitutional matters. The clause relating to the subject declared that, on the demand of any 50,000 voters, the question whether the constitution ought to be revised should be submitted by the federal government to the people, and, that if the vote should be affirmative, the two federal councils should be reëlected for the purpose of preparing the revision. The federal assembly decided that the provision applied only to the revision of the constitution as a whole, but in 1891 a constitutional amendment was adopted, which extended the initiative to particular amendments of the federal constitution.

In the Confederation, then, the initiative does not apply to ordinary laws, but fifty thousand voters can propose an amendment of the constitution, either in general terms, or in a complete and final form. When the proposal is couched in general terms the federal assembly proceeds at once to draw up the amendment if it approves thereof; if not, the question must first be submitted to the people whether such an amendment shall be made, and, in case the popular vote is affirmative, the duty of putting the amendment into shape is entrusted to the existing assembly, although that body has already shown itself opposed to the measure. The petitioners, however, are not obliged to rely on the fairness of the assembly in carrying out their intention, but are at liberty to present their amendment drawn up in final shape, and require that it shall be submitted directly to the people and the cantons for adoption. In such a case the assembly, on its part, is at liberty to advise the rejection of the measure, or can submit to popular vote at the time a distinct alternative.

Recourse to the initiative has been but seldom made in the Confederation: and even in the cantons, where it has long existed, and is applicable even to ordinary laws, it has not been found effective. The net result, for instance, of the initiative during twenty-four years in the great democratic Canton of

Zurich was the enactment of only three laws to which the legislature was opposed, and every one of the three was of doubtful value.

That form of the federal initiative which provides that, if a constitutional amendment is presented in a complete and final form by a specified number of petitioners, it must be forthwith submitted to the people, is advocated in Switzerland by believers in direct popular legislation, on the ground that it embodies the most complete realization of their idea. Under it the federal chambers play no part except to advise the acceptance or rejection of an amendment as a whole. For that very reason the form of the completed draft is disliked by men who believe in representative government, and who hold that every constitutional amendment, before being enacted, ought to be carefully prepared by responsible bodies and publicly debated. M. Droz is one of those Swiss statesmen who regard the new federal initiative in the form of the completed draft with great anxiety, and he points out that, whereas a democracy ought to rest on a secure constitutional foundation, the new initiative puts the constitution in question at every moment. Mr. Lowell, who thinks that the referendum has, on the whole, been a benefit to Switzerland, in the sense that it has produced the tranquilizing effect for which it was established, concedes that as much cannot be said for the initiative. He does not believe that this device will play any great part among the institutions of the future. Certainly, it has not yet developed much effciency in Switzerland. It is applicable only to questions which the representatives of the people, themselves quite sensitive to public opinion, refuse to pass; and when used in the form of the completed draft, it leaves no room for debate or for compromise and mutual concessions. The conception of the initiative may be bold, but those who have observed the institution longest and studied it most carefully pronounce it unlikely to be of any great use to mankind.

North American Review. 190: 222-30. August, 1909.

Representative Government versus the Initiative and Primary Nominations. Henry M. Campbell.

The chief aim and purpose of a popular government is to give effect to the wishes of the people; but it is the sober and mature judgment of the people, and not their temporary impulses and passions, which should be the basis of legislation. The representative system, because of the opportunity which it affords for discussion and deliberation, is better calculated to ascertain the true views of a majority of the people than any other known method; and to this fact the permanence and prosperity of the nation are due. No large body of men act *en masse* in the examination and determination of intricate and important questions. Special investigation by qualified persons is indispensable. Opportunity must be afforded to harmonize conflicting views and ascertain the real wishes of the majority. Time is also necessary to avoid the danger of being carried away by temporary impulses and passions. All these the representative system provides, and so generally is this fact recognized that its practice has become almost an instinct with the American people. It is universally resorted to in all political and social gatherings of men, whether large or small. Every club appoints its committees to frame its rules and order of procedure. Political conventions, municipal bodies and legislatures, proceed in a similar manner. In no other way can the business of assemblies of men be effectively transacted.

The reason for the radical changes which are now being proposed is a wide-spread popular belief that legislators have been corrupt and have not reflected the people's will, and particularly that they have fallen under the domination of great corporations, which have used them to promote their own selfish interests. It is undoubtedly true that there has been reason for many of these charges—though, like all popular charges, they have frequently been exaggerated. But it is also true that the danger from such sources has practically passed, and no necessity for drastic and revolutionary remedies now

exists. During the past few years a great moral awakening has spread over the land; and that great corrective, an enlightened public opinion, is rapidly suppressing the evils of which complaint has so long been made. It may also truly be said that these evils at their worst were mere excrescences upon the body politic, whose removal was required, rather than the destruction of the government itself.

But it is not true that our legislators have generally been corrupt or that they have failed to respond to the public demands. The most compelling force in any civilized community, and particularly in a country where the people choose their own rulers, is public opinion. Forms of government go down before it; and no system can long endure which ignores the rights or spurns the wishes of the people. For more than 120 years the representative form has been our only form of government. Under its benign influence, the country has prospered and grown great. Nowhere else on earth have the liberties of the people and their rights of property been so completely assured. Today the world turns to the United States as the great moral power among nations. This could not be if our legislators were generally either unintelligent or corrupt.

But granting that evils and difficulties attend the operation of the representative system—which is inevitable in all human institutions—the substitution of the "initiative" method would not afford the remedy.

In the first place, the "initiative" method is undoubtedly unconstitutional.

The constitution of the United States not only provides a representative form of government for the nation, but it guarantees a like form of government to the several states.

The debates in the constitutional convention of 1787 clearly show that the term "republican" government was used to indicate a representative form of government, as distinguished from a democracy.

Political and historical writers since that time have, without exception, attributed the same meaning to the term.

The opinion of the greatest jurists and the decisions of

the Supreme Court of the United States are to the same effect.

In the second place, notwithstanding the pretensions of its advocates, the "initiative" method is far from affording the people the promised opportunity of expressing and enforcing their views. On the contrary, it is a cunning and effective device for imposing upon the people the individual views of the proposer, and in such a specious and deceiving way as to delude the unthinking into the belief that they are acting for themselves. Whatever is proposed must be voted upon precisely as presented. If another individual has a different idea, however slight the difference may be, if his experience suggests some desirable modification, it must be embodied in a separate proposal and voted upon separately, and so on, *ad infinitum*. This is because the representative principle, which permits of discussion and modification of views, is wanting. The system to be workable presupposes such superhuman intelligence and honesty on the part of the proposer, and such diligence and discrimination on the part of the voter, as could only exist in the imagination of an idealist.

The opportunity which this method affords for fraud and the promoting of dishonest schemes is obvious, and it is not at all surprising to find included with the idealists and impractical reformers who are advocating this change a strong, though guarded, support from the practical machine politicians, who, feeling the effect of a wide-spread condemnation of their methods by an aroused people, realize they can no longer hope to maintain their influence or pursue their old practices in the halls of legislation, in the light of the publicity which is now being brought to bear upon them.

A further objection to the method is that it will greatly increase the number of elections, and it cannot reasonably be expected that the average voter, who is so indifferent that he will not give attention to the selection of a proper representative to protect his rights, will assume the far greater burden of examining and intelligently acting upon the multitude of proposals which may be presented by the "initiative" method.

Outlook. 72: 916-7. December 20, 1902.

Another Victory for Direct Legislation.

The remarkable majority in favor of direct legislation recorded in the recent state election in Illinois was equaled and even exceeded by the majority vote cast in favor of the same principle in the recent municipal election in Los Angeles, California. Los Angeles is now a city with more than a hundred thousand people, with an exceptionally small percentage of foreign-born citizens and an exceptionally large percentage of people of education. At the recent city election fifteen amendments to the city charter were submitted to the voters—an event which itself indicates that the principle of direct legislation had been pretty thoroughly accepted even before its formal adoption was moved. Most of these questions related to distinctly local issues, but three of them were of national interest. The first of these provided that the voters themselves might be called upon to pass or veto any proposed city ordinance upon the petition of from five to seven per cent. of the voters. The second provided that the voters might vote upon the recall of an elected official upon the petition of twenty-five per cent. of the voters. The third of the amendments in question provided for the adoption of the principle of civil service reform in the appointment of subordinate city officers, thus reducing the patronage of the elected officials. The vote upon these three questions was as follows:

	For.	Against.
Direct legislation	12,846	1,942
The recall of officials	9,751	2,470
Civil service reform	11,180	2,306

Thus the vote was seven to one for direct legislation, five to one for civil service reform, and four to one for the "recall." The direct legislation amendment was very carefully drawn. It recognizes the fact that there are occasionally city ordinances which must go into effect at once, and should not be delayed for the thirty days allowed for the referendum petitions upon ordinary measures. It stipulates, however, that only bills "for the immediate preservation of the public peace, health,

or safety" shall be classed as "urgency measures," and that these urgency measures shall not become law except by a two-thirds vote of the council; and it further stipulates that "no grant of any franchise shall be considered to be an urgency measure, but all franchises shall be subject to the referendary vote herein provided." This stipulation will prevent elected officials from treating public franchises as their own private property. The clause providing for the recall of officials seems to us of more than doubtful propriety. Not only might it sometimes be used by partisan opponents to secure a vote for the recall of an elected officer who has done nothing to forfeit public confidence, but it removes one of the brakes necessary to protect democracy against sudden gusts of prejudice and passion, and really attacks representative government at the root. But that this extreme measure for the popular supervision of public servants should have received a majority of four to one is certainly a sign that the people of Los Angeles very strenuously demand that government by politicians shall give place to government by the whole people.

Outlook. 89: 831-2. August 15, 1908.

Experiments in Democracy.

Some idea of the growth of the movement of the initiative, the referendum, and the recall, as measures intended to restore popular government to the people by destroying the control of private influences over legislative bodies, may be gathered from the following statement, which is based on a memorandum on the subject prepared by the National Municipal League: The first state to adopt a constitutional amendment providing for the initiative and referendum was South Dakota in 1898. Next came Utah (1900) with an amendment which is not self-executing, and the legislature has not so far passed the necessary enabling act. Oregon followed in 1902, Montana in 1906, and Oklahoma in 1907. South Dakota, Oregon, and Oklahoma have also extended the constitutional amendments so as to provide for the initiative and referendum in municipal

corporations. Maine, Missouri, and North Dakota are soon to vote upon constitutional amendments embodying the initiative and referendum for state matters; and Maine proposes to extend this right to municipal corporations concerning their local affairs. In 1907 Iowa and South Dakota each enacted a general law under which cities may, if they so choose, have charters embodying the general features of the "commission plan of government," and acquire with them the right to have the initiative, the referendum, and the recall. In South Dakota the constitution specifically gives to the people the right of the initiative and referendum, but in Iowa no mention thereof is made in the constitution. The Supreme Court of Iowa, however, has held that the statute conferring the right upon cities of a certain class to adopt a commission plan of government which included the initiative, referendum, and recall was constitutional, as the state constitution did not specifically forbid the granting of these rights. In Texas, cities of a designated size can be incorporated by special act, and since Galveston obtained its new form of government several cities of Texas have been given charters by special acts, some embodying the initiative, referendum, and recall, others one or two of these rights, and some none of them or only in a modified form. The recall is the most recent of the three new measures of relief. Los Angeles in 1903 seems to have been the first city to have made the recall a part of its city charter. In 1905 San Diego, San Bernardino, Pasadena, and Fresno, California, followed. In 1906 Seattle joined the list, and in 1907 there were added Everett, in Washington, and six other California cities—Santa Monica, Alameda, Long Beach, Vallejo, Riverside, and San Francisco. In Los Angeles the recall has been used successfully on one occasion. No state has a constitutional provision for the recall, though an attempt, upon initiative petition, was recently made in Oregon, but failed. Some idea of the actual working of these measures may be gathered from the experience of Los Angeles. Municipal affairs, published by the Los Angeles Municipal League, states that the city has had direct legislation since 1903. In those four years there has been a recall of one council man,

costing $1,000. There has been one referendum at a special election, costing $8,500. There has been one referendum at a general election. And one franchise graft worth $1,000,000 has been allowed to die for fear of a referendum; this cost nothing. The total expense of the law has, therefore, been $9,500, or $2,375 a year; and the total saving at least $1,000,000, or $250,000 a year. As Municipal Affairs says, this expense was "a very modest charge for insurance against legislation disapproved by the people."

Political Science Quarterly. 23: 587-603. December, 1908.

Popular Legislation in the United States: The Value of the System. John Bell Sanborn.

In order that the referendum may operate as an efficient check upon bad laws it must be intelligently directed. Those laws which need to be held up must be discovered before the end of the ninety days within which it is usually provided that the petition must be filed, and the requisite petition must be secured and filed within this period. If the referendum is to operate effectively in this regard, there must be a careful examination of the laws by persons who are interested in legislative matters and who are willing to scrutinize the acts of the legislature and to devote themselves to the task of securing the necessary petitions. In all probability only a portion of the bad laws will be discovered to be bad within the time limit. Unless the present means for the publication of our state laws are greatly improved, the public generally will be ignorant of the provisions of a large majority of the laws for a considerable period after their passage. It may be expected, therefore, that only those laws in which there is a very general interest, or which so affect the interests of particular individuals that they will make it their business to see that the petition is secured, will be subjected to the popular vote.

One very real danger must be noted. This is that the referendum may be used not only against laws which have been

secured by an active and well-organized minority, and which subserve special or class interests, but also to suspend, until the next general election, laws which are really desired by the people. In order that the referendum may have any effectiveness the percentage of voters necessary to secure the popular vote cannot be very large. It must be a number which can be secured without any real difficulty within the limited time. This requirement makes it possible for special interests which are adversely affected by legislation to prevent its taking effect for a considerable period. That this objection is not fanciful may be seen in the experience of South Dakota last year. In that state petitions have been filed for popular vote upon three laws passed by the legislature of 1907. These laws are: An act extending to one year the period of residence necessary for securing a divorce, an act prohibiting the shooting of quail until 1912, and an act prohibiting theatrical exhibitions, circuses, etc., upon Sunday.

After the referendum petition has been filed, there is still the question of the efficiency of the popular vote. If the bad laws do not, on the whole, slip through unobserved and unchecked by petition, and if the plan be not used to suspend good laws, it is still necessary that it shall secure an expression of the best public sentiment.

Such data as we have show that the referendum vote will be comparatively small. The ordinary experience with these popular votes, either upon laws or upon constitutional provisions, indicates that the vote cast on such questions is usually much smaller than that cast at the same time for candidates for public offices. In an article by Philip L. Allen, in the Boston Evening Transcript of May 23, 1906, figures were given showing the popular vote upon various laws or constitutional amendments. In the instances there cited, seventeen in number, the percentage of this vote to the simultaneous vote for public officers varied from seventy-eight to nineteen. In eight instances the vote was less than fifty per cent.; in only six instances did it exceed sixty per cent. The vote at the special referendum in Oregon, June 4, 1906, was considerably higher than this. The vote for governor in that year was 96,715; the

vote upon the referendum measures, partly constitutional amendments and partly laws, varied from 83,899, to 63,749. The highest vote noted was that in which the constitutional amendment extending the suffrage to women was defeated.

The experience in Oregon seems to be exceptional. The large vote seems to have been due partly to the novelty of the legislative referendum and partly to the interest aroused in the "equal suffrage" campaign. This single instance has little weight as against the experience of various other states, in which observation shows that in the long run only about one-half of the voters who go to the polls will take the trouble to vote upon laws submitted to them.

These comparisons are made with the number who vote for public officers. If a comparison be made with the total number of the legal voters of the state, the results are much more striking. In an election which for some reason calls out a large vote, as in a presidential year, the total vote cast may run up to about eighty per cent. of the voters. In Wisconsin, for instance, in 1904, the vote for governor was seventy-eight and seven-tenths per cent. of the voters. In a year in which the general interest is not so great, as for instance in a so-called "off" year, the vote is regularly much smaller. In Wisconsin, in 1906, the vote for governor was fifty-six per cent. of the voters. If only sixty to eighty per cent. of the voters come to the polls, and if only about one-half of these vote upon referendum matters, even a unanimous vote in favor of a measure means its adoption by a minority of the legal voters of the state.

Statistical studies as to the relative intelligence of the voters and non-voters upon referendum measures are unfortunately lacking. Perhaps in the future some investigation of this question may be undertaken. It would require an investigator with courage enough to make necessary but perhaps invidious distinctions between various voting precincts, in order to determine whether the vote upon a particular question came from the portions of the community which might be considered the most intelligent. For myself, I should not care to undertake such a task. I may, however, offer certain observa-

tions upon this problem from an *a priori* standpoint. There seems to be little reason to expect that the better element will vote any more strongly at a referendum than at a regular election. The "stay-at-home" vote would be the same in both cases. There is no indication that a referendum election tends to bring to the polls those who do not care to vote for the candidates for public offices. The citizen who does not care to go to the polls and vote for governor would probably not be attracted thither by a chance to vote against a proposed law. If our present political agitation does not stimulate him to activity, there is little hope that additional demands upon his time would move him. It may also be questioned whether those who now neglect their political duties would be a desirable addition to a body of citizens voting upon a proposed law.

Taking those who do their duty in this respect, who regularly vote at the polls, may we assume that the portion of these electors which votes for or against pending laws represents the more intelligent or better element? It is commonly considered that much of the trouble encountered in the working of our present political system is due to the fact that those who ought to know better ignore their political duties. The more intelligent citizen, when he votes at all, is unfortunately too apt to confine his voting to the election of officers and not infrequently he indicates his choice for only a portion of the offices to be filled. He does not come out to the primaries or to the caucuses. Can we then expect that the better element will constitute, or preponderate in, the body which votes upon pending bills?

What of the other sort of voter, the man who votes at least as often as the law allows, who does as he is told and who furnishes the strength of the machine? Voting on a few laws would offer no terror to him. He could quickly learn where to make the additional marks upon the ballot, and he would remember what was expected of him. There would therefore seem to be little hope that the vote on a law would express any higher public opinion than the vote for the members of the legislature.

In order that the referendum may be a success, it is not

only necessary that the voter should be intelligent but that he should vote intelligently. The one does not follow from the other. Intelligent voting demands a thorough knowledge of the subject to be voted on, and it requires a careful study of the proposed bill. In order that one who is to vote upon a pending measure, whether he be a member of the legislature or a legislator under the referendum, may do so properly, he should have made a thorough examination of the proposed legislation in all its various aspects; he should have at his command the reasons for and against the pending bill; he should be ready and willing to listen to argument both from those who favor and from those who oppose the measure; and he should be in a position, when the time comes for voting, to cast his vote with an entire appreciation of its effect. It may be objected that this is an ideal not reached by the members of our legislatures. In most cases, this is undoubtedly true. It is, however, an ideal which we may place before our legislators and towards which all other legislative reform should tend. It is not an ideal which the voter under the referendum may hope to attain or even approximate. If we admit, as I think we must, that the proper goal of legislation is a better and more intelligent consideration of pending measures, we must acknowledge that the referendum brings us no nearer that goal. In fact, it probably takes us in the other direction. The consideration which the vast majority of voters can give to a measure submitted to them is necessarily hasty and superficial. A careful examination of even a few laws, in the manner which I have indicated as necessary for a proper appreciation of the effect of one's vote, is impossible to practically every person outside of the legislature. The ordinary voter has little or no time to give to the examination of bills which may be presented to him. If he has the time, he seldom has the facilities for obtaining the information that is needed if he is to vote in a proper manner. Comparatively few voters possess the information which is necessary for an intelligent judgment regarding the numerous candidates and issues of our various elections. Until the voters meet these existing obligations imposed by our political system,

obligations which cannot be done away with by any system of initiative or referendum, we should hesitate to place new burdens upon them.

The referendum tends to place the emphasis at the wrong end of the legislative work. If we elect good men to the legislatures the needs of checks of this kind will largely pass away. The agitation for the referendum has been to a considerable extent due to the failure of the voter properly to perform his duties as an elector. However numerous and complex the causes of this failure may be, one cause which has been very potent is the public indifference to caucuses and elections. If this public indifference continues, we cannot expect that the referendum will be successful. With this indifference removed, the need for the referendum will no longer be so apparent.

An interest in referendum measures can never be a substitute for an interest in elections. The referendum is exceptional. It can never be expected to operate upon more than a few of the many laws enacted. The bulk of our legislation must continue to proceed from our legislatures, unchecked by the referendum. The referendum is then a method of legislation which can affect only a small fraction of the laws, and it depends for its efficiency upon conditions which, if realized, would make its employment largely if not entirely unnecessary.

Against the initiative, as far as its referendum feature is concerned, the same objections may be made as against the referendum when used alone. The popular vote upon a bill proposed by the initiative would be no better and no worse than on a bill passed by the legislature. The initiative would however, add to the number of bills to be voted on and would thus decrease the attention which the voters could give to each one.

What sort of bills may we expect to see proposed under the initiative? It is not especially important to determine whether they will be conservative or radical. If the system is worthy of adoption, undesirable bills will be eliminated by the referendum. The question is as to the form of the bills. Is it to be expected that they will be so worded as to accomplish the desired ends?

Practically every bill which comes before an American legislature is originally introduced in such form that its passage would be extremely unfortunate. It is probably not too much to say that nearly all bills are, in their original form, crude and unworkable. These bills—and the same would be true of those proposed by initiative petition—are the product of one man or of a small group of men. Even when based on a careful and conscientious study of the subject, they have the shortcomings inevitable from the limitations surrounding their origin. Before they can even approximate perfection, they need the public discussion, the criticism of opposing interests, the suggestions of foes as well as of friends. The process of amendment and reamendment, which is possible only in a legislature, is necessary to the normal growth of a bill into a law.

Every subject of importance is apt to be covered by several bills. None of these is perfect; each probably has something of merit. In the legislature, these bills can be considered together; the good portions of each can be accepted and the bad rejected. No such procedure can be followed in the case of initiative measures. If several similar bills are proposed by petition, they cannot be amended and combined. One must be selected and the others rejected, unless, as is entirely possible, more than one act dealing with the same subject is adopted by the popular vote.

The failure of the referendum to afford opportunity for adequate discussion has already been noted. This defect will be felt much more keenly in the case of bills proposed by initiative petition than in the case of bills which pass the legislature in the regular way before they are submitted to the referendum. In the latter case, discussion in the legislature enables that body to bring the bill into something like proper shape. In the former case all the advantages of such discussion, all the suggestions to be derived from the arguments of interests adversely affected by the bill, all the amendments that might be made by parties interested in its passage, are lost. Intelligent legislation is not promoted by a system which

treats a bill, in the shape in which it is presented to a legislature, as a finality.

An illustration of the difference between initiative and regular legislation is found in the "anti-pass" law of the state of Oregon. In 1906 a bill covering this subject was submitted by initiative petition and was adopted by a vote of 57,281 for and 16,799 against. This bill was so poorly worded that, upon a literal reading, it forbade a railroad from issuing passes to its own employees but allowed it to issue them to the employees of other roads. Fortunately the act was not effective, because of the absence of an enacting clause. The legislature of 1907 passed a general railroad law in which the subject of passes was covered in a proper and intelligible manner.

The failure of the initiative to afford opportunity for amendment is met to some extent in the system adopted in Maine and pending in North Dakota. In these states, the legislature may reject the initiative bill and propose a substitute. In such a case both bills are submitted to popular vote, and the voters are called upon to choose between them. This device enables the legislature to correct faults in the proposed legislation. The substitute will undoubtedly be far superior to the initiative bill. The existence of the two bills will, however, complicate greatly the work of the people. The voting upon a single bill is difficult enough; the choosing between competing bills will be much more difficult.

The most that can be claimed for the initiative is that it forces the legislature to act. The laws resulting from this coercion will in most cases be crude and unscientific. From the point of view of the improvement of our legislation in the matter of form, they will mark a long step backward. Unless the force of public opinion is insufficient to bring about needed legislation through the regular channels, the initiative cannot be considered desirable.

No statistics are available, nor is it easy to conceive how statistics could be secured, showing operation of public opinion. I believe, however, that wherever there exists in favor of a measure a public opinion strong enough to ensure the preparation of a bill, to secure the necessary signatures to an

initiative petition and to effect the adoption of the bill by popular vote, the same result will be obtained, and on the average more quickly, through the regular legislative processes. The recent laws for the regulation of railways, the laws affecting public service corporations in New York and Wisconsin, the restrictions imposed on insurance companies, are among the many evidences of the power of public opinion. Indeed, some think that the passage of two-cent-fare laws has shown that the legislatures are too responsive to public opinion.

The members of the legislature are in a very direct sense responsible to the people. It is true that the "boss" has frequently dictated nominations and controlled elections. Under such circumstances the legislator may care little about public opinion. This situation is, I think, not the result of any defects in our legislative system but of public indifference. When the public takes an interest in the work of the legislature, it will take an interest in the persons nominated and elected to the legislature. When this latter interest is manifest, the members will respond to the wishes of their constituents. Until such an interest is taken, the initiative and the referendum will be useless.

After the initiative bill becomes a law by popular ratification, it occupies a somewhat peculiar position. It is, under all the plans proposed or in operation, subject to amendment or repeal like any other act. It would, of course, be possible to give such a law a higher status by providing that it should be repealed or altered only by popular vote. The wisdom of such a solution may be doubted. Legislation, and particularly the advanced legislation which would probably result from the initiative, is experimental. It is apt to need frequent adjustment to changing conditions or to unforeseen exigencies revealed in its practical operation. A plan which would prevent the amendment of an initiative law by the legislature would deprive our laws of a very necessary flexibility. On the other hand, if authority is left in the legislatures to amend or to repeal acts of popular legislation, many of the alleged merits of the initiative are lost. If the legislature needs to be coerced into enacting a law, if it acts only under compulsion, it may take the first

opportunity to repeal or at least emasculate the law which has been forced upon it. This may be considered an overdrawn picture, but it must be remembered that the initiative is based upon the assumption that the legislature is not to be trusted.

Such a legislature, however, is more likely to pursue a different course. As we have already seen, the law passed by the aid of the initiative and referendum is apt to be crude in form. If left unaltered it tends, even if it be not absolutely unworkable, to discredit the perhaps excellent principle embodied in it. The hostile legislature then needs only to let it alone. This is very easy. The plea that the law is not to be amended by the legislature, that the sovereign people have spoken and that their mandate must be obeyed literally, will often be heard. This specious plea is one which a legislature will be quick to use, if it desires to discredit a good principle embodied in a bad law.

One other and very fundamental objection may be made both to the referendum and to the initiative. They tend to weaken the sense of legislative responsibility. With the referendum the legislator does not vote for or against a bill, he votes to give the people an opportunity to vote on it. He does not need to express his own opinion. He may say that his views are immaterial, that even if he is opposed to a bill it would be unjust to refuse to allow the people a chance to express themselves. This feeling will affect his attitude towards all bills, irrespective of the question whether they are actually to be subjected to a referendum vote. Every bill may be thus subjected, and if no petition is filed concerning a particular measure, the people may be considered to have ratified it. They have had the opportunity to act, and if they remain quiescent the responsibility for the bill rests with them, not with the legislature.

The initiative would also shift responsibility. If new laws are needed, they may be submitted by the initiative petition. If the legislators do not propose the measures needed, they are not to be blamed. The failure of the people to use their initiative indicates that they do not desire action upon the matter.

The diffusion of responsibility which would result from shift-

ing the burden of legislative reform from the few to the many is in direct opposition to the teachings of political experience. The way to get good government is not to scatter the responsibility among a number, so that each can dodge the blame if the work goes ill or claim the credit if it goes well. The approved way is to make each responsible for his appointed task and to hold him rigidly to that responsibility.

Progress in legislative reform is to be attained, I believe, not through any radical change in our system of representative government, but rather through the selection of better men as members of our legislatures, through improvement of the machinery of legislation, so that the members will know what they are doing, and through a diminished demand for prompt legislative action in every social emergency, real or faneiful. If legislation can be confined to the matters in which it is really required, our legislators will have time to do their work in workmanlike fashion.

Review of Reviews. 34: 172-6. August, 1906.

Oregon as a Political Experiment Station. Joseph Schafer.

The movement for the initiative and referendum commenced in Oregon about 1892, as a feature of the Populistic agitation then so strong in the west; the idea, of course, was brought from Switzerland. A number of attempts to induce the Oregon legislative assembly to accept the principle proved futile. Finally, in the session of 1899, a joint resolution was passed by large majorities proposing a constitutional amendment to provide for it. The resolution was reintroduced two years later, as the constitution requires, and only one vote was recorded in opposition. It then went to the people at the general election of 1902 (just ten years after the agitation for it was begun), and was adopted by an overwhelming majority.

The essence of the new provision is found in the first sentence of Section 1, Article IV, as amended: "The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and a house of representatives, but the

people reserve to themselves power to propose laws and amendments to the constitution, and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve at their option the power to approve or reject at the polls any act of the legislative assembly." Eight per cent. of the legal voters of the state are empowered to propose laws and constitutional amendments, which go into operation on receiving a majority of votes in favor at the next general election; and 5 per cent. may demand the referendum on any measure (except as to laws necessary for the immediate preservation of the public health, peace, or safety) passed by the legislative assembly, provided the petitions are filed within ninety days after the close of the legislative session at which they were enacted.

The initiative and referendum amendment was not an end in itself, but a means to an end. It provided, first of all, a way by which the constitution could be amended in any particular within a reasonable time by the people, acting in their legislative capacity. Those who were responsible for bringing forward the amendment had in mind several important reforms whose enactment into law they believed would be made possible only by this means. Governor Chamberlain, in his inaugural address delivered in the January following the adoption of the initiative and referendum, said:

> Legislative contests over the election of United States senators, and lobbies in the interest of railway and other corporations, have so obstructed legislation in years gone by that many laws actually demanded have failed of enactment, while others absolutely without merit and vicious in their tendency have found lodgment on our statute books. As a means to check these evils, the initiative and referendum is to be attempted, and there is no question but that the effect will be beneficial.

Reforming the Primaries.

One of the reforms for which the amendment was intended to prepare the way was a primary-election system of nominating state, county, and local officers. So strong was the demand for this reform that in the campaign of 1902 both of the leading political parties pledged themselves to secure its enactment by the legislature. The question of the popular election of United States senators was also a most practical one in Oregon,

in view of the various legislative "hold-ups" chargeable to the old constitutional method of choosing senators, and as early as 1901 a bill was passed providing for a popular vote for United States senator. The People's Power League, however, which had fathered the initiative and referendum, resolved upon the enactment of a thoroughgoing primary law that should include, as an organic feature, the nomination and election of senatorial candidates. So a bill was drawn up and presented to the people at the general election in June, 1904, which was passed by a great majority.

Voting on Local Option, Woman Suffrage, and Other Propositions.

In addition to the primary-election law, the people voted, in 1904, on an initiative measure called the "local-option liquor law," for enabling the people of counties, precincts, and districts to prohibit the sale of intoxicants as beverages. The bill was proposed by the Anti-Saloon League, and was carried by a substantial majority. With the encouragement of this law, the temperance element has become extremely active in Oregon politics. One county and a number of smaller districts were cleared of saloons prior to the recent election, while at that time eight counties "went dry," as the expression is here, and a total of more than two hundred saloons, according to one estimate, will be closed in consequence. The liquor dealers proposed an initiative law professing to amend, but actually designed to repeal, the local-option law, and this the people voted down by a large majority, as appears from unofficial returns.

Ten other measures were voted on at the June election, five of them being constitutional amendments, four proposed laws, and one the general appropriation bill passed by the last legislature, which went to the people on petition, under the referendum, for approval or rejection. There was an equal-suffrage amendment, a bill for the purchase by the state of a certain toll road across the Cascades, an anti-pass bill, a bill for taxing gross earnings of sleeping-car companies, refrigerator-car companies, and oil companies; another for taxing gross earnings

of express companies, telegraph companies, and telephone companies; a constitutional amendment applying the initiative and referendum to local, special, and muncipal laws and parts of laws; one for giving cities and towns sole power to enact and amend their charters, another providing that the state printer's salary can be fixed at any time, and, lastly, an amendment providing a new method of amending the state constitution.

Object-Lessons in Self-Government.

The way in which this formidable list of subjects was dealt with is highly creditable to the Oregon electorate. Several of the measures, like equal suffrage, the local-option amendment, and the toll-road bill, were defeated by majorities ranging from about 7,500 to 10,000; the others were carried by from 15,000 to 30,000. In no case was there indifference; everything points to the fact that the ordinary voter studied the questions proposed, made up his mind before going to the polls, and voted independently on all the propositions placed before him. The measures have provoked a vast deal of discussion; indeed, it may be said that for a number of months past the people of Oregon have all been more or less actively engaged in the business of legislation. The educational benefits incident to the system are bound to be very important. With a change in the initiative law perfecting the method of distributing copies of proposed measures to the voters, there is no reason why every farmers' club, labor union, and lyceum in the state cannot become in effect a miniature legislative assembly. In this way the interests of all sections and all classes of the people are bound to receive attention; measures will be proposed for submission to the local representatives, and others to go before the people at the general elections. Already there is much discussion of new reforms—the correction of defects in the primary law, the creation of as many representative districts as there are representatives in the legislature, a law giving cities and legislative districts the power to recall officers for cause; some go so far as to suggest the adoption of the English principle, which allows a constituency to select its can-

didate for the legislature from any part of the state, and allows men to seek election in several constituencies at the same time, insuring the return of all the most desirable legislators.

Absence of Radicalism.

But, with all this political activity, there is no evidence of dangerously radical tendencies. The people want to make their government as perfect as possible, but are not disposed to hurry the process unduly. The recent election, indeed, revealed in a striking manner their conservative disposition. The defeat of the equal-suffrage amendment, and the large majority in favor of the general appropriation bill, which was almost universally denounced when passed by the last legislature, are illustrations in point. So far from the initiative and referendum endangering the stability of our institution, they are likely to act as a sobering and steadying influence upon the entire electorate.

In conclusion, we remark among the Oregon people a genuine joy at the discovery of their political capabilities. Representative government is good, but there is an exhilaration in direct participation in law-making; the interest is sharpened, the intelligence is quickened, moral susceptibilities are aroused. The Oregon people are convinced that in the double form of government, partly representative and partly direct, they have discovered the true solution of the problem of self-government in our American states.

Spectator. 73: 234-5. August 25, 1894.

Swiss Referendum and the People's Will.

Weighed by its results, the "right of initiation" has still to justify its existence. True, it enables fifty thousand well-meaning voters to propose a new law for the consideration of their fellow-citizens; it also enables faddists and fanatics who by hook or by crook can collect the needful signatures, to advertise their schemes and theories at the public expense. For, before a bill is submitted to the popular vote, a copy of it, "in the three languages of the Confederation," must be sent to

every voter on the registers, and to the outlay in stationery and printing thereby entailed has to be added the cost of taking the votes and counting the ballots. Moreover, the multiplication of elections and "votations" is a serious evil, and essentially democratic. The oftener people are required to vote the less disposed they seem to profit by the privilege. A Geneva paper lately complained that the polling booths are open as often as the churches. In June last a measure adopted by the local legislature of the canton, as to which the referendum had been demanded, was rejected by the votes of some four thousand citizens, out of a registered total of eleven thousand; and important national questions are frequently decided by a minority of the electorate.

Yale Review. 4: 289-304. November, 1895.

Referendum and Other Forms of Direct Democracy in Switzerland. E. V. Raynolds.

A question of much importance is how large a proportion of the people take their civic duties seriously enough to vote on the questions submitted to them. The number of course varies with the varying amount of popular interest in particular measures, but on the average it is for the Confederation about sixty per cent. of the whole number of citizens entitled to vote. In Zurich, during the twenty years just mentioned [1869-1889], the number of valid ballots cast average almost exactly sixty-three per cent. of the whole number of voters. Obviously the decision is commonly given by a minority of the whole electorate. These percentages are, however, larger than they would be if every voter were free to abstain. Many cantons declare voting a duty, and some back up the declaration by fining those who fail in this duty. In Zurich this is regulated by the communes, so that some of the citizens are free to remain away from the polls, while others abstain at their peril. One result of the compulsory law is seen in the large proportion of blank ballots cast. In Zurich it is often the case that more than twenty per cent., and sometimes more than thirty per cent., of the ballots are blank.

ADDITIONAL REPRINTS

Annals of the American Academy. 43:81-109. September, 1912.

Provisions for State-Wide Initiative and Referendum.

C. B. Galbreath.

The referendum in various forms has long been familiar to Americans. Its use in adopting constitutions and constitutional amendments dates back to the Revolution. In place of the landsgemeinde New England presents the town meeting in which the whole citizenship meet in legislative capacity to enact laws of local application. Mr. Bryce has given an interesting comparison of the two in his "The American Commonwealth."

The revolutionary period furnishes a solitary instance of provision in the state constitution for the initiative. On October 1, 1776, a convention assembled in Savannah, Georgia. It formulated a very progressive constitution for the time, which contained among other things the following section:

"No alteration shall be made in this constitution without petitions from a majority of the counties, and the petitions from each county to be signed by a majority of the voters in each county within the state; at which time the assembly shall order a convention to be called for that purpose, specifying . . . the alterations to be made, according to the petitions preferred to the assembly by the majority of the counties as aforesaid."

It is in comparatively recent years, however, that practical application has been made of the principle of the state-wide initiative and referendum. The Farmers' Alliance some years ago had endorsed these agencies. About the same time it found its way into the platform of the populist party. In 1894 the Direct Legislation League was formed, and a more systematic propaganda was organized for the introduction of the Swiss form of the initiative and referendum into all of the states, and it was even proposed to extend it to the federal government. At first the

movement appears to have been without financial support, except such as was gathered in meager voluntary subscriptions from the slim purses of a few converts and enthusiastic advocates. The organ of the league, the *Direct Legislation Record,* edited by Eltweed Pomeroy, had a limited circulation and in a few years it suspended publication. The *Arena,* which promptly took up the battle and waged it right valiantly under the editorial leadership of B. O. Flower, was not financially much more fortunate. The various publications devoted to the advancement of the cause of direct legislation in America, however, had, from 1890 to 1897, a wonderful influence, and leagues organized in the interest of this reform sprang up in many states. It was powerfully aided by organized labor, Powderly, Gompers and Sullivan early giving it substantial support.

The work in behalf of the state-wide initiative and referendum was to win its first signal success in the State of South Dakota. When the Knights of Labor were in their ascendancy in 1885, Rev. Robert Haire, a Catholic priest, now of Aberdeen, that state, proposed what he termed the "people's legislature," which included the principles of the initiative and referendum. He advocated this for a time until the Swiss system was brought to his attention. His enthusiasm was not abated but he perhaps slightly modified his views. Henry L. Loucks, now of Watertown, South Dakota, became president of the Farmers' Alliance. In this position he took up Father Haire's ideas and succeeded in having them incorporated in the platform of the National Farmers' Alliance. Loucks and his followers earnestly advocated the adoption of the initiative and referendum. In 1897 their views gained ascendancy in the state legislature and that body submitted to the people an initiative and referendum amendment to the constitution. This was ratified by the electors of the state at the November election in 1898, by a decisive majority.

The movement thus effectually inaugurated has since been steadily gaining ground. The following significant summary presents the

Progress of the Initiative and Referendum in America

1897. South Dakota legislature voted to submit an initiative and referendum amendment to constitution.

1898. The electors of South Dakota adopted initiative and referendum amendment by vote of 23,876 to 16,483.

1899. Oregon legislature voted to submit initiative and referendum amendment to constitution.

Utah legislature voted to submit initiative and referendum amendment to constitution.

1900. The electors of Utah adopted initiative and referendum amendment by vote of 19,219 to 7,786.

1901. Oregon legislature a second time, as required by constitution, voted to submit initiative and referendum amendment to constitution.

Nevada legislature voted to submit referendum amendment to constitution.

1902. The electors of Oregon adopted initiative and referendum amendment by vote of 62,024 to 5,668.

1903. Nevada legislature a second time, as required by constitution, voted to submit referendum amendment to constitution.

Missouri legislature voted to submit initiative and referendum amendment to constitution.

1904. The electors of Nevada adopted referendum amendment to constitution by vote of 4,393 to 702.

The electors of Missouri defeated initiative and referendum amendment.

1905. Montana legislature voted to submit initiative and referendum amendment to constitution.

1906. The electors of Oregon adopted supplemental initiative and referendum amendment to constitution by vote of 46,678 to 16,735.

The electors of Montana adopted initiative and referendum amendment by vote of 36,374 to 6,616.

1907. The electors of Oklahoma adopted a state constitution, including provisions for the initiative and referendum, by vote of 180,333 to 73,059.

North Dakota legislature voted to submit initiative and referendum amendment to constitution. The following legislature failed to submit amendment as required by constitution.

Maine legislature voted to submit initiative and referendum amendment to constitution.

Missouri legislature voted to submit initiative and referendum amendment to constitution.

1908. The electors of Missouri adopted initiative and referendum amendment by vote of 177,615 to 147,290.

The electors of Michigan adopted a constitution containing provision for referendum on laws and initiative on constitutional amendments by vote of 244,705 to 130,783.

1909. Arkansas legislature voted to submit initiative and referendum amendment to constitution.

Nevada legislature voted to submit initiative amendment to constitution.

1910. The electors of Arkansas adopted initiative and referendum amendment by vote of 91,367 to 39,111.

Colorado legislature voted to submit initiative and referendum amendment to constitution.

The electors of Colorado adopted initiative and referendum amendment by vote of 89,141 to 28,698.

1911. California legislature voted to submit initiative and referendum amendment to constitution.

The electors of California adopted initiative and referendum amendment by vote of 168,744 to 52,093.

Nevada legislature a second time, as required by constitution, voted to submit initiative amendment to constitution.

Washington legislature voted to submit initiative and referendum amendment to constitution.

Nebraska legislature voted to submit initiative and referendum amendment to constitution.

Idaho legislature voted to submit initiative and referendum amendment to constitution.

Wyoming legislature voted to submit initiative and referendum amendment to constitution.

Wisconsin legislature voted to submit initiative and referendum amendment to constitution.

North Dakota legislature voted to submit initiative and referendum amendment to constitution.

The electors of Arizona adopted a constitution containing provision for the initiative and referendum by vote of 12,187 to 3,822.

The electors of New Mexico adopted a constitution containing provision for the referendum by vote of 31,742 to 13,399.

1912. The electors of Washington will vote on adoption of initiative and referendum amendment at the November election.

The electors of Nebraska will vote on the adoption of initiative and eferendum amendment at the November election.

The electors of Idaho will vote on the adoption of initiative and referendum amendment at the November election.

The electors of Wyoming will vote on the adoption of initiative and referendum amendment at the November election.

The electors of Wisconsin will vote on the adoption of initiative and referendum amendment at the November election.

The electors of Nevada will vote on the adoption of initiative amendment at the November election.

The electors of Indiana will vote on the adoption of a constitution, containing provision for the initiative and referendum, at the November election.

The constitutional convention of Ohio has submitted a series of amendments to its constitution, including one providing for the initiative and referendum. These will be voted on at a special election, September third.

1913. North Dakota legislature will consider, the second time, amendment to the constitution providing for initiative and referendum.

Not only has the movement for direct legislation captured a number of states and prepared the way for sweeping victories in others at the coming fall election, but it has also made converts of a number of distinguished public men, notably William Jennings Bryan, Woodrow Wilson and Theodore Roosevelt, to say

nothing of a goodly array of governors, United States senators and members of the national house of representatives. In these later days, even the so-called conservative or reactionary statesmen with political ambitions seek to avoid expressing an adverse opinion on this popular tenet of the progressive faith.

South Dakota

South Dakota, as we have seen, was the first state to adopt an initiative and referendum amendment to its constitution. The provisions of this amendment are briefly expressed and comprehensive. The people reserve to themselves the "right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the state, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect." These reserved powers or "rights," as they are called, are, of course, respectively the initiative and the referendum. It is further provided that "not more than five per centum of the qualified voters of the state shall be required to invoke either the initiative or the referendum;" that the governor shall not veto measures enacted by vote of the people; and that the legislature shall enact laws carrying into effect the provisions of this section of the constitution.

The essential provisions of the South Dakota plan, it will be seen, include a brief constitutional provision, general and mandatory in form, providing for the initiative and referendum; and an act by the legislature, authorizing in detail the application of the system. It was evidently the purpose of those who framed the constitutional provision, in conformity with approved custom, to limit the constitution to an organic provision and to leave to the legislature all statutory enactments elaborating such provision. The results were apparently satisfactory to the friends of the reform.

Until the year 1908 the people of South Dakota made no use of the state-wide power, secured to them through legal enactment nine years before. In that year the referendum was invoked against laws passed at the previous session of the legislature and with them was submitted to the people a law brought before the

legislature by initiative petition. At the next general election in 1910 six laws were submitted to the electors of the state. At this same election the legislature submitted to the people six constitutional amendments. These latter were not invoked by petition, but the votes on them are given in the following table for purposes of comparison:

INITIATIVE AND REFERENDUM VOTES IN SOUTH DAKOTA

	Yes.	No.	Majority Approving	Majority Rejecting	% Total
1908					
Local option liquor law.....	39,075	41,405	.....	2,330	70
Divorce law	60,211	38,794	21,417	.....	87
Quail law	65,340	32,274	33,066	.....	86
Sunday law	48,378	48,006	372	.....	85
(Total vote for governor, 113,904.)					
1910					
Laws					
County option	42,416	55,372	.....	12,956	92
Electric headlights on locomotives	37,914	48,938	.....	11,028	82
"Czar" law, suspension from office by governor	32,160	52,152	.....	19,992	80
Embalmers' law	34,560	49,546	.....	14,986	80
Congressional districts	26,918	47,893	.....	20,975	70
Militia	17,852	57,440	.....	39,588	71
Constitutional Amendments					
Renting lands	48,152	44,220	3,932	.....	87
Salary, attorney-general	35,932	52,397	.....	16,465	83
Equal suffrage	35,289	57,709	.....	22,420	88
Debt limitations	32,612	52,233	.....	19,621	80
Revenue amendment	29,830	52,043	.....	22,213	77
New institutions	36,128	47,625	.....	11,497	79
(Total vote for governor, 105,801.)					

While the initiative and referendum has not been long in operation in South Dakota, the people of that state are forming opinions in regard to its practical workings. In a recent letter Governor R. S. Vessey says:

"I might say that the operation of these laws in South Dakota has been generally successful and satisfactory, but in my judgment the practical efficiency thereof would be materially increased and the interests of the majority better safeguarded if the percentage of voters necessary to either initiate or refer a measure were increased considerably."

Utah

Following the example of South Dakota the people of Utah in November, 1900, adopted an amendment to the constitution of that state. This amendment was drawn on the same general plan as that of South Dakota. The following excerpt includes its essential provisions:

"The legal voters, or such proportional part thereof, of the State of Utah, as may be provided by law, under such conditions and in such manner as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people for approval or rejection, or may require any law passed by the legislature (except those passed by a two-thirds vote of the members elected to each house of the legislature) to be submitted to the voters of the state before such law shall take effect."

This provision might have been more happily worded, but its purpose is clear and sufficiently definite. In one particular it differs from the corresponding provision of the constitution of South Dakota. In the latter the legislature is required to enact supplemental legislation; in the former the legislature is simply permitted, not directed, to do this. The Utah amendment also authorizes the legislature to extend the initiative and referendum to legal subdivisions of the state. Up to the present time the legislature of Utah has not chosen to enact laws carrying into effect these sections of the constitution providing for direct legislation.

Oregon

The name of Hon. W. S. U'Ren has been prominently identified with the movement in Oregon from its inception down to the present time. In 1892 he organized the Oregon Direct Legislation League, of which he was chosen secretary, a position that he held for ten years—until the initiative and referendum amendment became a part of the constitution of that state. In 1895 he appeared before the legislature of Oregon as the agent of various organizations interested in the movement. In this work he was active and indefatigable. Through the various societies that he represented, he distributed 70,000 pamphlets in English and German, presented

to the legislature petitions signed by 13,000 people and secured endorsements of political parties at state and local conventions. The measure for which he labored earnestly in that year failed on a tie vote in the state senate and by only a single vote in the house. Shortly afterward he wrote to a fellow-worker:

"We are sure of success soon. No great reform ever made such great strides before. Two years and two months ago not one man in a thousand in Oregon knew what the initiative and referendum meant. To-day I believe that three-fourths of the intelligent voters understand and favor this revolution."

Later elected to the legislature, he found opportunity to press more vigorously and effectively his propaganda. Finally, in 1899, the initiative and referendum amendment passed the Oregon legislature, and, in compliance with constitutional requirement, passed that body again in 1901 and was submitted to the people the year following. U'Ren and his friends had done effective work. The amendment was adopted by the decisive majority of 62,024 to 5,668.

A number of causes made Oregon a fruitful field for this work. The action of the legislature of that state for a number of years had been most unsatisfactory. Domination by powerful industrial and financial interests was frequently charged. The lobbyist plied his work openly and unrebuked. The struggle over the election of United States senators, frequently bitter and prolonged, at times discredited the state and deprived it of its proper representation in the senate of the United States. The popular prejudice against state legislatures was especially strong in Oregon. The people were ready for a change that held forth a prospect of a new and improved political order of things.

As the initiative and referendum powers have been more extensively used in Oregon than in any other state, the essential portion of the amendment conferring them is here reproduced in full:

ARTICLE IV

Section 1. The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent

of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety) either by the petition signed by five per cent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people shall be had at the biennial regular general election, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: "Be it enacted by the people of the State of Oregon." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor.

Sec. 1a. The referendum may be demanded by the people against one or more items, sections or parts of any act of the legislative assembly, in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections or parts of an act shall not delay the remainder of that act from becoming operative. The initiative and referendum powers reserved to the people by this constitution are hereby further reserved to all local, special and municipal legislation of every character, in and for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent of the legal voters may be required to order the referendum nor more than fifteen per cent to propose any measure, by the initiative, in any city or town.

Laws have been passed providing in detail for carrying out the foregoing sections of the constitution. Provision has also been made for supplying people with information relative to the measures upon which they are called to vote. Interested persons may prepare arguments or explanations for or against proposed measures submitted at the same election, which with the full text of these measures are printed and bound together by the secretary of state and by him distributed to each elector. The expense of preparing and printing the argument or explanation must be borne by the person or persons furnishing the same.

VOTES ON INITIATIVE AND REFERENDUM MEASURES SUBMITTED IN OREGON, 1902-1910

The following table gives the votes on measures since the introduction of direct legislation in Oregon and shows what percentage of the total vote for candidates was cast on each measure:

	Yes	No	Majority Approving	Majority Rejecting	% Total.
ELECTION 1902					
Total Vote 92,920					
Original initiative and referendum amendment	62,024	5,668	56,356	.....	73
ELECTION 1904					
Total Vote 99,315					
Local option liquor bill[1].....	43,316	40,198	3,118	.....	84
Direct primary bill[1].....	56,205	16,354	39,851	.....	73
ELECTION 1906					
Total Vote 96,751					
Woman suffrage amendment[1]	36,928	46,971	.....	10,043	87
Amendment applying initiative and referendum to acts of legislature affecting constitutional conventions and amendments[1]	47,661	18,751	28,910	.....	69
Amendment to give cities and towns exclusive power to enact and amend their charters[1]	52,567	19,942	32,625	.....	75
Amendment authorizing the legislature to fix the compensation of state printer[1].....	63,749	9,571	54,178	.....	70
Amendment for initiative and referendum on all local laws[1]	47,778	16,735	31,043	.....	67
Bill proposing change in local option law (proposed by liquor interests)[1]	35,397	45,144	.....	9,747	83
Bill for state-ownership of a toll road[1]	31,525	44,525	.....	13,000	79
Anti-pass bill (railroad)[1]	57,281	16,779	40,502	.....	76
Bill for tax on gross earnings.. of sleeping, refrigerator, and oil car companies[1]	69,635	6,440	63,195	.....	79
Bill for tax on gross earnings of express, telegraph and telephone companies[1]	70,872	6,360	64,512	.....	80
Omnibus appropriation bill for the maintenance of state institutions[2]	43,918	26,758	17,160	.....	73
ELECTION 1908					
Total Vote 116,614					
Amendment increasing compensation of members of the legislative assembly[3]	19,691	68,892	.....	49,201	76
Amendment relating to location of state institutions[3]...	41,975	40,868	1,107	.....	71
Amendment increasing the number of judges of the supreme court and making other changes relative to the judiciary[3]	30,243	50,591	.....	20,348	69

VOTES ON INITIATIVE AND REFERENDUM MEASURES—Continued

	Yes	No	Majority Approving	Majority Rejecting	% Total
Amendment changing time of holding general elections from June to November[3]	65,728	18,500	47,138	.....	72
Bill relative to the custody and employment of county prisoners[3]	60,443	30,033	30,410	.....	78
Bill requiring railroads to give public officials free passes[2]	28,856	59,406	.....	30,550	76
Bill appropriating $100,000 for armories[2]	33,507	54,848	.....	21,341	76
Bill to increase appropriation for state university[2]	44,115	40,535	3,580	.....	72
Woman suffrage amendment[1]	36,858	58,670	.....	21,812	82
Fishery bill proposed by fish-wheel operators[1]	46,582	40,720	5,862	.....	75
Amendment giving power to cities and towns to regulate race tracks, pool rooms, sale of liquor. etc.[1]	39,442	52,346	.....	12,904	79
Amendment exempting property improvements from taxation[1]	32,066	60,871	.....	28,805	80
Amendment providing for the recall, *i. e.*, the removal of a public officer by vote of the people and the election of his successor[1]	58,381	31,002	27,379	.....	77
Bill instructing legislators to vote for people's choice for United States senators[1]	69,668	21,162	48,506	.....	78
Amendment providing for proportional representation[1]	48,868	34,128	14,740	.....	71
Bill limiting expenditure of money in political campaigns[1]	54,042	31,301	22,741	.....	73
Fishery bill proposed by gill-net operators[1]	56,130	30,280	25,850	.....	74
Amendment requiring indictment to be by grand jury, etc.[1]	52,214	28,487	23,727	.....	69
Bill to create Hood River county[1]	43,948	26,778	17,170	.....	61
ELECTION 1910					
Total Vote 120,248					
Woman suffrage amendment[1]	35,270	59,065	.....	23,795	78
Act authorizing purchase of site, construction and maintenance of branch insane asylum[3]	50,135	41,504	8,630	.....	76
Act calling convention to revise state constitution[3]	23,143	59,974	.....	36,831	69
Amendment providing separate election districts for members of the general assembly[3]	24,000	54,252	.....	30,252	65
Amendment permitting classification of property for purposes of taxation[3]	37,619	40,172	.....	2,553	64

VOTES ON INITIATIVE AND REFERENDUM MEASURES—Continued

	Yes	No	Majority Approving	Majority Rejecting	% Total
Amendment authorizing establishment of railroad districts and purchase and construction of railroads[3]	32,844	46,070	.....	13,226	65
Taxation amendment authorizing uniform rule of taxation "except on property not specifically taxed," etc.[3]	31,629	41,692	.....	10,063	61
Act increasing judge's salary in eighth judicial district[3]	13,161	71,503	.....	58,342	70
Bill to create Nesmith county[1]	22,866	60,591	.....	37,725	69
Bill to maintain state normal school at Monmouth[1]	50,191	40,041	10,147	.....	75
Bill to create Otis county[1]	17,426	62,016	.....	44,590	66
Bill providing for annexation of portion of Clackamas county to Multnomah county[1]	16,250	69,002	.....	52,752	71
Bill to create Williams county[1]	14,508	64,090	.....	49,582	65
Amendment providing for county regulation of county taxation and abolishing poll tax[1]	44,171	42,127	2,044	.....	72
Amendment providing for city local option[1]	53,321	50,779	2,542	.....	86
Bill to fix liability of employers[1]	56,258	33,943	22,315	.....	75
Bill to create Orchard county[1]	15,664	62,712	.....	47,048	65
Bill to create Clark county[1]	15,613	61,704	.....	46,091	64
Bill providing for permanent support, by taxation, of Eastern Oregon State Normal School[1]	40,898	46,201	.....	5,303	72
Bill providing for annexation of portion of Washington county to Multnomah county[1]	14,047	68,221	.....	54,174	68
Bill providing for permanent support, by taxation, of the Southern Oregon State Normal School[1]	38,473	48,655	.....	10,182	72
Amendment prohibiting manufacture and sale of intoxicating liquors[1]	43,540	61,221	.....	17,681	87
Bill to make prohibition amendment effective[1]	42,651	63,564	.....	20,913	87
Bill creating board of commissioners to examine and report on employers' indemnity for injuries[1]	32,224	51,719	.....	19,495	69
Bill prohibiting the taking of fish from Rogue river except by hook and line[1]	49,712	33,397	16,315	.....	69
Bill to create Deschutes county[1]	17,592	60,486	.....	42,894	65
Bill to provide for creation of new towns, counties and municipal districts by popular vote within territory affected[1]	37,129	42,327	.....	5,198	66

VOTES ON INITIATIVE AND REFERENDUM MEASURES—Continued

	Yes	No	Majority Approving	Majority Rejecting	% Total.
Amendment permitting counties to incur indebtedness beyond $5,000 to build roads[1]	51,275	32,906	18,369	.....	70
Bill extending primary law so as to allow voters to express their choice for candidate for President and Vice-President, presidential electors and delegates to presidential conventions[1]	43,353	41,624	1,729	.....	71
Bill to create board of inspectors of state government and providing for bi-monthly reports[1]	29,955	52,538	.....	22,583	68
Amendment extending initiative, referendum and recall powers of the people, etc.[1]	37,031	44,366	.....	7,335	67
Amendment providing for verdict of three-fourths of jury in civil cases and separate summons for grand and trial jurors; authorizing certain changes in judicial system and procedure of supreme court; fixing terms of supreme court and official tenure of all courts[1]	44,538	39,399	5,139	.....	69

[1] Submitted under the initiative.
[2] Submitted under the referendum upon legislative act.
[3] Submitted to the people by the legislature.

A further fact is worthy of consideration in this connection. It is comparatively easy to get the required percentage of signatures to petitions in Oregon. We are apt to think of this as a sparsely settled agricultural state. It is so in part, but it has a comparatively large urban population, and this is centered in one large city. Thirty per cent of the population of the state is in Portland. In the State of Ohio only twenty-nine per cent of the total population is found in the cities of Cleveland, Cincinnati, Columbus, Toledo and Dayton. If, therefore, cities of over 100,000 inhabitants are considered, Oregon has a comparatively greater urban population than Ohio or a number of other more populous states. This makes it easy to get the required percentage of signatures to petitions in the one large city, Portland.

It is natural, perhaps, that the people of Oregon should be divided in opinion, even after their somewhat extended experience with the initiative and referendum. The views of the friends of the system are fairly set forth in the following statement from an address by United States Senator Jonathan Bourne:

> When the initiative and referendum was under consideration it was freely predicted by enemies of popular government that the power would be abused and that capitalists would not invest their money in a state where property would be subject to attacks of popular passion and temporary whims. Experience has exploded this argument. There has been no hasty or ill-advised legislation. The people act calmly and deliberately and with that spirit of fairness which always characterizes a body of men who earn their living and acquire their property by legitimate means. Corporations have not been held up and blackmailed by the people, as they often have been by legislators. "Pinch bills" are unknown. The people of Oregon were never before more prosperous and contented than they are to-day, and never before did the state offer such an inviting field for investment for capital. Not only are two transcontinental railroads building across the state, but several interurban electric lines are under construction, and rights of way for others are in demand.

Quite at variance with this estimate is the view of Hon. Frederick V. Holman, regent of the Oregon State University. In a recent address in Chicago he said among other things:

> It is a political axiom that the majority should rule, but without prejudice to the rights of the minority. In Oregon under the initiative the minority rules in many instances and sometimes to the prejudice of the majority. . . . Briefly to summarize, then, we find that the so-called "reserve" power is greatly abused; that measures in overwhelming numbers and many of them loosely drawn are being put upon the ballot; that the percentage of those who do not participate in direct legislation is increasing; that lack of intelligent grasp of many measures is clearly indicated; that legislation is being enacted by minorities to the prejudice of the best interest of the majority; and that the constitution itself is being freely changed with reckless disregard of its purpose and character.

The impartial observer must concede, however, that the people of Oregon are not disposed to surrender the power reserved to them in the initiative and referendum. A comparatively fair index to the popularity of the system is found in the vote at the election of 1910 on the "act calling a convention to revise the state constitution." It was generally understood that the purpose of this act was to revise the initiative and referendum out of the constitution. The vote stood: for the act, 23,143; against the act, 54,525.

Nevada

In 1904 a referendum amendment to the constitution of Nevada, submitted to the electors of that state by the legislature, was approved by a large majority in a comparatvely light vote. Ten per cent of the electors are empowered to invoke the referendum against any law or resolution passed by the legislature. A majority of those voting thereon can approve or veto a measure. Thus far, the people have invoked the referendum on only one measure. In January, 1908, after the labor trouble at Goldfields, a law creating a state constabulary of 250 men was passed. Against this the organized labor of the state invoked the referendum. At the November election the law was upheld by a vote of 9,954 to 9,078. A constitutional amendment providing for the initiative has been submitted to the people and will be voted on at the coming November election.

Montana

The electors of Montana in 1906 ratified an amendment to their constitution providing for direct legislation. Eight per cent of the voters at the last preceding gubernatorial election are required on initiative, and five per cent on referendum petitions. The usual "emergency laws" are excepted from the referendum, while "laws relating to appropriations for money," laws for the submission of constitutional amendments and "local and special laws" may not be invoked by the initiative or submitted to the electors by referendum petition. The percentages of signatures to either the initiative or referendum petitions must come from at least two-fifths of the whole number of counties of the state. The law against which the referendum is invoked continues in force until voted upon, unless the petition against it is signed by fifteen per cent of the electors. In the latter case the operation of the law is suspended as soon as the petition is filed. If a majority of the electors voting on any measure vote against it, the measure is void. As usual in other states that have adopted constitutional provisions for direct legislation, the governor may not veto a measure submitted to the people. The

style of all laws originated by the initiative shall be, "Be it enacted by the people of Montana." To this date the electors of the state have not used the "reserved powers" in this section of their constitution.

Oklahoma

When Oklahoma adopted her constitution preparatory to admission into the Union, that document was widely criticised in certain quarters as "radicalism run wild." Indeed, if well authenticated reports are true, men in high places, inspired with patriotic fervor, sought to prevent the approval of the constitution by the people, lest its irrational and "socialistic" spirit might sweep with consuming fury beyond the borders of the new state to other inflammable territory. The many worded constitution has proven more formidable in length than in the fundamental character of its ponderous articles and numerous sections. The student will be a little surprised to find that the article devoted to the initiative and referendum is explicit, comparatively brief, carefully written and conservative in word and spirit. The percentages prescribed for signatures are fifteen to initiate a constitutional amendment, eight to initiate any "legislative measure," and five to order the referendum on any act (emergency measures excepted) passed by the legislature. The people are required to vote at the next general election on measures submitted to them, unless a special election is ordered by the legislature or the governor. "Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state and addressed to the governor of the state, who shall submit the same to the people." The referendum "may be demanded against one or more items, sections, or parts of any act of the legislature," but this shall not delay the remainder of the act from going into effect. The initiative and referendum is extended to all counties and districts of the state. A measure rejected by the people can not be brought before them again by initiative petition for three years, unless said petition is signed by twenty-five per cent of the legal voters.

The following provision of this article is important:

"Any measure referred to the people by the initiative shall

take effect and be in force when it shall have been approved by a majority of the votes cast at such election. Any measure referred to the people by referendum shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and not otherwise."

These requirements, it will be seen, make it comparatively much more difficult to enact a law by initiative process than to veto it through the referendum.

Following are the results of the operation of the initiative and referendum in Oklahoma:

INITIATIVE AND REFERENDUM VOTES IN OKLAHOMA

	Yes	No	Majority Approving	Majority Rejecting	% Total
1908					
Initiative bill, authorizing school lands of the state to be sold to homesteaders.....	96,745	110,840	.....	14,095	82
Legislative proposal to establish a "New Jerusalem," or model city for seat of state government	117,441	75,792	41,649	.....	76
(Total vote at election, 252,022.)					
1910					
Special Election, June 11[4]					
Initiative amendment, providing for merger of railroad companies	53,784	108,205	.....	54,421	100
Initiative bill, relative to location of state capital.....	96,515	64,501	32,014	.....	99
(Total vote, 161,989.)					
1910					
Special Election, August 2					
Initiative amendment, containing "grandfather clause" for disfranchising negroes.....	135,443	106,222	29,221	.....	100
(Total vote, 241,655.)					
1910					
Regular Election					
Initiative amendment providing for woman's suffrage....	88,808	117,736	.....	28,988	84
Initiative amendment providing for local option on liquor question	105,041	126,118	.....	21,077	94
Legislative proposal to establish a "New Jerusalem," or model city, for seat of state government	84,336	118,889	.....	34,563	82
Referendum on general election law	80,146	106,459	.....	26,313	76
(Total vote for governor, 245,452.)					

[4] Supreme court declared this election unconstitutional.

Maine

Maine was the first state on the Atantic sea-board to provide in its constitution for the initiative and referendum. Laws may be proposed by initiative petitions with signatures of 12,000 electors. Constitutional amendments can not be initiated by petition. If a law proposed by initiative is not enacted by the legislature it must be referred to the people, either alone or with a competing measure of similar character framed by the legislature. Laws, except emergency measures, shall not take effect until ninety days after the adjournment of the legislature. If before the expiration of this time petitions signed by 10,000 electors are filed with the proper officers against any law it must be submitted to popular vote for adoption or rejection. The legislature is also authorized to enact measures, subject to ratification by referendum vote of the people. A majority of those voting for and against any measure adopts or rejects it. The initiative and referendum powers are extended to the municipalities of the state.

In 1909 the people of Maine for the first time voted for measures under this new provision of their constitution with the following results:

	Yes	No	Majority Approving	Majority Rejecting	% Total
Referendum on act fixing standard of alcohol in intoxicating liquors	31,093	40,475	.....	9,382	50
Referendum on act to divide the town of York and establish the town of Gorges	19,692	34,722	.....	15,030	39
Referendum on act authorizing reconstruction of Portland Harbor bridge	21,251	29,851	.....	8,700	36

(Total vote for governor, 141,031.)

Missouri

In 1903 the legislature of Missouri voted to submit to the people an amendment to their constitution providing for direct legislation. The required percentages of signatures to petitions were too high to suit the friends of the movement and they had other objections to the amendment. It was defeated at the election in 1904. In 1907 the legislature again submitted an initiative and

referendum amendment which was approved by a substantial majority of the electors in November of the following year. This amendment provides for the referendum on petitions signed by five per cent, and for the initiative on petitions signed by eight per cent of the electors of the state. The latter applies to constitutional amendments as well as laws enacted by the legislature. The required percentage of signatures must come from at least two-thirds of the congressional districts of the state.

Supplemental legislation was promptly enacted for carrying this constitutional provision into effect. Two amendments to the constitution were submitted on initiative petitions in 1910 with the following results:

	Yes	No	Majority Approving	Majority Rejecting	% Total
State-wide prohibition of the liquor traffic	207,281	425,406	.....	218,125	94
State tax for support of University of Missouri	181,659	344,274	.....	162,615	79

(Total vote, 671,763.)

Through the republican organization of the state, petitions were circulated to initiate a constitutional amendment providing for a change in the senatorial districts of the state. The secretary of state refused to accept these petitions on the ground that it was unconstitutional to amend the constitution in this regard. In this action he was sustained by the supreme court of the state.

In a recent letter Herbert S. Hadley, governor of Missouri, writes:

> It is probable that quite a number of amendments to the constitution and legislative measures of public importance will be submitted to a vote of the people at the coming election by initiative petition. Among these will probably be a measure dividing the state into congressional districts; one providing for home rule for the people of the large cities in police and excise affairs; an amendment to the constitution authorizing a workmen's compensation law; one authorizing a public service corporation commission, and one prohibiting contract labor in the state penitentiary.
>
> I believe if the question of retaining or rejecting this proposition (the initiative and referendum) were submitted to a vote of the people, that they would vote to retain this provision of the constitution by a much larger majority than that by which it was adopted in 1908.

Michigan

The constitution of Michigan, adopted in 1908, gives the legislature power to refer any act, except appropriation bills, to the

people. Acts so referred do not become laws unless approved by a majority of the electors voting thereon. The people are also given the power to initiate constitutional amendments, the signatures of twenty-five per cent of those voting for secretary of state at the last preceding election being required to submit such amendment to the legislature, which may, in joint session of both houses, reject it or refer it to the people in original or modified form.

Arkansas

The initiative and referendum constitutional amendment, adopted by the people of Arkansas in 1910, in all of its essential features, including percentages of voters required to sign petitions, follows the corresponding provision in the constitution of Oregon.

Colorado

The State of Colorado followed closely in the footsteps of Arkansas in adopting the Oregon plan of direct legislation. The legislature of the state met in special session September 10, 1910, and submitted to the people an amendment which they adopted at the following November election.

Arizona

The constitutional convention of Arizona in 1910, true to western predilection, framed a constitution so emphatically progressive that it precipitated extended discussion in both houses of congress when the question of admitting that state into the Union was under consideration. The presidential veto eliminated from that constitution the recall provision, but left intact the reservation of initiative and referendum powers. Ten per cent of the voters may propose laws and fifteen per cent constitutional amendments. Five per cent may order the submission of any measure (except emergency laws) passed by the legislature. Initiative powers are extended to "cities, towns and counties."

New Mexico

New Mexico, seeking admission into the Union with Arizona, adopted a constitution in 1910 that was considered only "conservatively progressive." It provided for the referendum but not for the initiative. The laws excepted from this provision are those "providing for the preservation of the public peace, health and safety; for the paying of the public debt and interest thereon, or the creation or funding of the same, except as in this constitution otherwise provided; for the maintenance of public schools or state institutions, and local or special laws." Referendum petitions must be signed by ten per cent of the voters of the state, and this ratio must be contributed by at least three-fourths of all the counties. A law against which referendum petitions are filed continues operative until it is vetoed at the election, unless fifteen per cent of the electors have signed the petitions, in which case the operation of the law is suspended until the people vote upon it. A law submitted to the people is rendered void if a majority of those voting on it vote against it, but the total vote cast thereon must be at least forty per cent of the entire vote cast at the election.

California

The latest state to incorporate an initiative and referendum amendment in its constitution is California, and this amendment exceeds in length any of similar import and purpose previously ratified in the United States. In the first section the people "reserve to themselves the power to propose laws and amendments to the constitution, and to adopt the same at the polls, independent of the legislature, and also reserve the power, at their own option to so adopt or reject any act, or section or part of any act passed by the legislature."

This amendment provides:

(1) For the direct initiative[5] on laws and constitutional amendments through petitions signed by eight per cent of the electors voting at the last previous gubernatorial election.

[5] In a general way the initiative, two of its phases, and the referendum may be defined as follows:

(2) For the indirect initiative on proposed laws through petitions signed by five per cent of the electors voting at the last preceding gubernatorial election.

(3) For the referendum on laws through petitions signed by five per cent of the electors voting at the last preceding gubernatorial election.

(4) The reservation of initiative and referendum powers to the counties, cities and towns of the state.

When a proposed law is submitted through the indirect initiative to the legislature, that body may enact it without change. If this is not done the proposed law must be submitted to the electors, but the legislature may submit at the same election a competing measure of similar character. Direct initiative measures must be submitted at least ninety days before the election at which they are voted upon. The usual emergency measures are excepted from the operation of the referendum. Many details are given in regard to signatures to petitions, submission to the electors of the state, and the conduct of elections.

American Year Book, 1913. pp. 76-8.

Laws of 1913.

The initiative and referendum measures proposed for submission by the legislatures of 1913 show a marked tendency to depart from the simplicity and directness of the well-known Oregon plan. Indeed, this tendency first appeared in Wisconsin in 1911 and was sustained in Ohio in 1912 (A. Y. B., 1912, P. 64). The measures proposed in 1913 in Minnesota and Iowa

1. The initiative is the power reserved to the people to originate laws or constitutional amendments by petition and enact them by popular vote.
2. The direct initiative is the power reserved to the people to originate laws or constitutional amendments by petition and enact them by popular vote, without reference to the general assembly.
3. The indirect initiative is the power reserved to the people to originate laws or constitutional amendments and enact them by popular vote after they have been referred for consideration to the general assembly.
4. The referendum is the power reserved by the people to veto or sustain by popular vote a law passed by the general assembly.

are especially interesting from this point of view. The Minnesota measure provides that a law or constitutional amendment may be initiated upon petition of not less than two per cent. of the voters (as indicated by the number of votes actually cast at the last preceding election) and thus compulsorily introduced into the legislature. If not adopted by the legislature, the measure in its original form or in one or more amended forms may be submitted to the people upon petition of an additional six per cent. of the voters, in case the measure is an ordinary bill, or of an additional eight per cent. of the voters, in case the measure is a proposal for an amendment to the constitution. In the former case the measure requires for approval by the people a majority of the votes cast thereon; in the latter case it requires a majority of all the votes cast at the election or four-sevenths of those voting thereon, being not less than three-sevenths of all those voting at the election. Thus the distinction between statutory and constitutional law is intended to be preserved. Acts of the legislature may be preferred to the people for their approval or disapproval upon petition of not less than six per cent. of the voters, but no such referendum petition shall operate to suspend the execution of a law, pending its submission to the people, unless signed by at least 15 per cent. of the voters. This provision is designed to prevent the abuse of the referendum by interests which plan to delay, even when they cannot hope to defeat, the execution of the popular will. The Minnesota measure furthermore explicitly provides that legislative measures adopted by the people shall not be subject to the gubernatorial veto and shall not exceed the limitations imposed by the constitution upon the legislature. There is no means provided, however, for preventing the enactment of unconstitutional legislation by the people, although of course the courts would be free to refuse to enforce such legislation.

The Iowa measure recognizes this difficulty and provides that the Secretary of State shall submit all measures initiated by the people to the Supreme Court of the state for an opinion concerning their constitutionality. The court must report within 20 days, and if its report is unfavorable to the constitutionality

of a proposed measure, the Secretary of State must refuse to submit it to the people. The Iowa measure also distinguishes between constitutional and statutory legislation by the people by providing that the former must be submitted and adopted at two successive regular biennial elections, adoption at the first election to operate merely as a resolve of the people ordering the second and final submission. The statutory referendum is designed to apply, like the gubernatorial veto, not only to acts of the legislature, but also to parts, sections, or items of acts. In both Minnesota and Iowa the people are to be informed concerning the details of proposed measures and the arguments pro and con by official publicity pamphlets, as in Oregon.

In Washington the legislature of 1913 passed an interesting act designed to supplement the constitutional amendment adopted by the people in 1912. In most of the states the procedure for direct legislation has required action by the legislature to supplement the amendment adopted by the people, and in one state, Utah, the legislature has abused its responsibility by refusing to enact the necessary legislation, thus defeating for all practical uses the purposes of the amendment. The various details of the procedure in the several states under the initiative and referendum have been fully described in the YEAR BOOK (1911, pp. 180-83), but in the state of Washington the law has introduced some innovations worthy of notice. First, it provides that each measure proposed for initiation by the people shall be provided with a ballot title before the circulation of the initiative petitions is begun. This ballot title shall be prepared by the Attorney-General on request of the Secretary of State, and shall contain in not more than 100 words an accurate description of the nature and contents of the measure proposed for initiation. It shall be placed at the head of each paper on which signatures to the petition for the initiation of the measure are to be obtained. In case of dispute between the initiators and the Secretary of State, concerning the fairness of the ballot title, the former may appeal to the Superior Court for a final adjudication. Second, it provides that the initiators shall file with their petition a full statement of the source

and amount of all contributions to the fund employed in financing the initiation proceedings as well as of the nature and amount of all expenditures. Thus the principle of publicity for the regulation of campaign finances is extended to the financing of campaigns for measures as well as for candidates. Third, it provides that the Attorney-General shall also formulate a ballot title for any competing measure that may be submitted by the legislature, indicating clearly the difference between the measure of the legislature and that of the original initiators. The ballot is then to be prepared in such a way that the voter may express his preference (1) between either measure and none at all and (2) directly between the two measures. If a majority of those voting thereon prefer either measure to no measure at all, one or the other must be declared adopted. That one will be declared adopted for which the greater number of voters expressing a preference have indicated their choice. Thus the voter must vote twice in order to express his choice in full, but if he does so, his preference is indicated with perfect accuracy, which is not the case under the more usual methods of determining the choice of the voters when competing measures are submitted on the same ballot. Fourth, the Washington law of 1913 provides for the editing of the official publicity pamphlet by a state board of censorship, consisting of the Governor, the Attorney-General and the Superintendent of Public Instruction. This board is instructed to exclude from the pamphlet all matter which in their opinion is vulgar, obscene, profane, scandalous, libellous, defamatory, treasonable, provocative of disturbances of the peace, or unmailable under the postal regulations. Otherwise the proponents and opponents of measures have the usual privileges of submitting arguments.

Political Quarterly. No. 1: 159-61. February, 1914.

Direct Legislation in the West. O. D. Skelton.

For the first time in Canadian record, the initiative and referendum have this year been given a regular place in the political machinery of the provinces. There has been hitherto little ten-

dency to lessen the power and responsibility of Parliament. In 1898 a Dominion plebiscite was held on the question of prohibiting the liquor traffic, but in view of the small and indecisive vote the Dominion Government declined to be bound by the expression of opinion. There has been much talk in Quebec of a referendum on the naval question, but it is not likely that any reference to the people will take any other form than the normal general election appeal. Provincial constitutions are amended by the provincial legislatures. It is only in municipal affairs that direct legislation has secured an important foothold. In nearly every province the municipal authorities are required to submit money by-laws, involving long-time changes, to the vote of the rate-payers, while local option, particularly in Ontario, has been a favourite device for regulating the traffic in intoxicating liquors. On the whole, both of the latter provisions have been justified by experience, though important money matters are often decided by ridiculously small pollings.

In the prairie provinces there has been for four or five years a strong agitation, particularly among the Grain-Growers' Associations, for the introduction of the referendum and initiative into the constitution of the provinces. In the past session the Alberta and Saskatchewan Governments introduced and passed legislation in conformity with this demand. The Alberta Act went into force immediately. The Saskatchewan Act, passed in March, was ingeniously made contingent on a referendum to test the popular desire for a referendum; it was provided that it should not come into force unless approved by 30 per cent of the voters on the provincial lists—a stringent requirement in a thinly settled province. The referendum was held in November, and though the vote cast was six to one in favour, little over one-third the required total was secured. While more stringent in this respect, the Saskatchewan Act was otherwise more favourable to the advocates of direct legislation. It provided that every Act except Acts granting supplies should be deferred from coming into force until ninety days after the close of the session, unless otherwise explicitly ordered by a two-thirds vote on a yea and nay roll-call, whereas in the Alberta Act no Acts are so deferred unless the legislature so chooses. In Saskatchewan

5 per cent of the electors voting at the last provincial election might demand a referendum on any deferred Act; in Alberta 10 per cent, including 8 per cent in each of 85 per cent of the electoral districts. In Saskatchewan 10 per cent might present to the legislature a proposed Act, and if not adopted without substantial amendment, require its submission to the electors, whereupon, if approved by a majority, it should be enacted by the legislature, while if rejected, it could not be presented again for three years. In Alberta similar procedure is provided, except that 20 per cent of the total number of voters and 8 per cent in 85 per cent of the electoral districts are required to initiate legislation. In both Acts measures involving a change on public revenue, or not certified by the Attorney-General as being within the legislative jurisdiction of the province, are excluded.

It is not likely that extensive use will be made of the Alberta Act. The Western demand for the referendum is an echo of the United States movement, rather than an outgrowth of local needs. It disregards vital differences in the political situation north and south of the border line. In the States, with little connexion between executive and legislature, and all bills private members' bills, responsibility for legislation is diffused, and multitudinous badly-drafted, crank or corrupt measures are a common result. In the provinces the cabinet system brings responsibility, a winnowing-out of proposals, and a much higher standard of actual legislation. It is true that in some of the provinces, notably Manitoba and Alberta, there has been a degree of administrative crookedness and electoral corruption unequalled by many of the States in the south. These evils, however, are untouched by the referendum, and in fact, so far as it tends to lessen the power and responsibility of the legislature, it may hinder rather than help the movement for political purity. The experiment, however, will be worth study.

Annals of the American Academy. 43: 65-77. September, 1912.

Direct Legislation and the Recall. Henry Jones Ford.

But we have now to consider the argument from the side of political availability, and there we have a very different situation to consider. I must admit that my own views on this subject have been affected by a visit which I paid to Oregon a little over a year ago, where I had the opportunity to meet the people who are leading in this movement. I found that they scouted the idea of being in love with the initiative and referendum, except as an emergency measure. To talk to them of the superior advantages of representative government would be like talking to a man in a swamp about the superiority of an automobile to a scow. He would grant you that, but he would say: "Just now I need the scow; after I get out of this swamp I will use the automobile." They do not seek to destroy representative government; they want to get rid of a base imitation and introduce the real thing. When they accomplish the reorganization of public authority that they intend, they expect to drop the initiative and referendum out of ordinary use. They will then be kept in reserve simply for emergency use.

Under existing conditions some positive advantages are claimed for the initiative and referendum, as follows:

(1) *They avoid inequalities of legislative apportionment.*

Among the ideas that have come down to us from the eighteenth century is the one that there is something in the nature of superior civic quality in the votes of people that live in the country. When you examine the facts of the case you do not find it so. Practical politicians will tell you that the rural vote may be a bribe-taking vote. And yet our state constitutions seem to be generally framed on the assumption that country districts ought to be allowed greater political weight than city districts. So our legislatures are generally made up in a way grossly disproportionate in their representative arrangements. A small county will be given as great representation in a state senate as a large one, and cities are denied proportionate representation. The inequality is the more serious, since we allow senates more

power than is allowed to them in any other country. In Canada they have no senates except in Quebec and Nova Scotia. All that great range of provinces on our northern border—Ontario, Manitoba, Saskatchewan, Alberta, British Columbia—are without a senate. It is urged in behalf of the initiative and referendum that they afford means of escaping the system of minority rule that is now entrenched in our legislatures. If the people may resort to the initiative, then laws demanded by public opinion cannot be defeated by minority interests occupying positions of unjust advantage. That is a matter of great practical importance in some of our states.

(2) *They escape legislative obstruction to constitutional amendment.*

Our state constitutions put massive obstacles in the way of constitutional amendment. Proposals must run the legislative gauntlet in successive sessions. Moreover, the form of amendments may be subjected to sinister manipulation. All such barriers and difficulties are avoided by the initiative, which provides for direct appeal to the people. One of the constitutional reforms advocated in Oregon is the abolition of the state senate. What chance would there be for getting such a proposal before the people if the senate had to be asked for its permission?

(3) *They provide means of political action apart from those controlled by special interests and free from the secret entanglements of the legislative committee system.*

In our legislative bodies control over legislation is turned over to committees. The legislature is cut up, broken into fragments, and each fragment may have the power of frustrating or perverting action on the public business. Legislation becomes a matter of give and take, of bargain and deal. The control of legislative procedure by committees is a constitutional anomaly. There are more standing committees in the Pennsylvania legislature than in all the commonwealths of the British nation together. There are but four standing committees in the English parliament to transact the business of the whole empire. In Swiss commonwealths the ordinary practice is for the executive council to prepare all bills for legislative consideration. Under our system,

with the facilities that exist for delaying and perverting legislation in committee rooms, almost revolutionary force is necessary before the complicated machinery will yield to the pressure of public opinion. The initiative and referendum provide means of escape from such difficulties.

(4) *The initiative and referendum make for more careful legislation.*

This claim may seem paradoxical, since it is generally supposed that it is the peculiar merit of representative government that it ensures deliberate action. How then, it may be asked, is it possible to claim that direct action by the people themselves will produce more careful legislation. Well, as regards representative government genuinely constituted, such a claim would appear absurd; but not so as regards the sort of government we do have, that pretends to be representative but is not really so. Hence it is that Governor Wilson supports the initiative and referendum, from the standpoint of practical availability, although in his treatises on government he has described such devices as inferior to representative government. In his speech at Kansas City, May 5, 1911, he said:

> If we felt that we had genuine representative government in our state legislatures, no one would propose the initiative and referendum in America.

But, it may be said, we do have elections for the choice of representatives, and the representatives meet in legislative session, so how then can it be averred that we do not now have representative government in America? The answer is that the representatives act under conditions that make them the agents of special interests rather than representatives of the people. The quality of power is determined not by the conditions under which it is gained but by the conditions under which it is exercised. If conditions permit those in the representative position to use their opportunities for themselves and their clients, then, instead of acting as a control over the government in behalf of the people, representative institutions are converted into agencies of class advantage and personal profit. Conditions have been introduced in this country which have brought about just that result. That is the prime cause of the public discontents that are now having

varied manifestations. As Edmund Burke pointed out in his classic essay on the cause of the public discontents of his time:

> When the people conceive that laws and tribunals, and even popular assemblies, are perverted from the ends of their institution, they find in the names of degenerated establishments only new motives to discontent.

The American people despise legislatures, not because they are averse to representative government, but because legislatures are in fact despicable. In view of what I have quoted from Ambassador Bryce as to the actual character of American legislatures, is it at all surprising that the American people should become impatient of their behavior?

When an American legislature meets its first concern is a distribution of patronage among its members. In other countries all appointments to office are made by the executive; the legislature does not participate, and hence it acts as a check upon extravagance. The ability of American legislatures to provide offices and salaries for attendants is a corrupting influence of immense power. The immediate effect is an irresistible pressure towards extravagance, as it is the aim of members to get as much patronage as possible. Hence it is that almost every session of an American legislature is attended by pay-roll scandals, and the freedom of action of members is compromised by the obligations they incur as office-brokers.

When the legislature gets to work there is nobody representing the community as a whole with power to propose measures and bring them to vote. Numerous bills are introduced and referred to standing committees. The number of bills introduced in a session ranges from about 1,200 in the smaller states up to 4,000 or over in Pennsylvania or New York. In the British parliament, with the affairs of an empire to administer, there are about 800 bills introduced in a session. In a Canadian provincial parliament the number is about 150. In such circumstances as these, where the representatives can act as a body of critics, discussing the estimates and proposals of the administration you have representative government. But when the bills are thrown in by thousands, and put through by logrolling you have only a wretched travesty of representative government. In this way a mass of crude, obscure, sinister, perverted legislation is dumped

into our statute books year after year. The courts have frequently to go behind the language of the law and guess at the legislative intent. As a consequence the judiciary has virtually annexed the legislative function.

It is in comparison with this chance medley and not in comparison with the deliberate procedure of representative government as exemplified in England and in Switzerland, that the claim is advanced that the initiative and referendum make for more careful legislation. Before a law is submitted by that process it undergoes a course of careful preparation. Drafts are passed from group to group of people, for examination and criticism. The phraseology is carefully scrutinized, and gradually perfected, for once it goes upon the voting papers it is not open to amendment, and the exposure of a defect might frustrate the movement for that year at least. From personal investigation of the case I am satisfied that the process of legislation by initiative as practised in Oregon does provide for more careful legislation than the ordinary procedure in an American legislature.

(5) *The initiative and referendum clear the way for a reorganization of public authority.*

The force of this claim will be admitted by anyone who will take the trouble to examine the scheme of government that the Oregon reformers are trying to introduce. It would be hopeless to expect that it could ever get through a legislature of the type now existing. To propose it to the legislature would be inviting that body to commit suicide, for it abolishes the senate and provides for a representative assembly of a different type from anything now known in this country although much like that found in Canada and other English commonwealths. The governor is to appoint his cabinet associates and he will sustain about the same relation to the assembly as the president of a joint-stock company does to its board of directors. The ambushes and concealments of the legislative committee system will be swept away. The governor will have the right to introduce his measures and if the assembly reject them he is to have the right to call a referendum and lay them before the people. It will be seen that the movement is far more than an amendment of the present state con-

stitution; it proposes a new state constitution. It can have no chance of success unless it can find an outlet distinct from any channel of action allowed by the present state constitution. So likewise the movement which substituted our national constitution for the articles of confederation had to find a new channel. That movement was started by voluntary initiative outside of the federal legislature and outside of the system provided by the articles of confederation.

I do not deny that there are risks—grave risks—attending any process of constitutional change by initiative. The case of revolutionary France has not lost its pertinence. Mistakes may be and doubtless will be made. But the risks are limited by the essentially municipal character of the American state. The trouble that may ensue from experimentation can hardly be greater or more varied than that which has attended experimentation in city government. If anywhere an efficient organization of state authority is produced, the type will spread like the commission plan of city government. The Oregon movement is pregnant with developments of the greatest hope and promise.

Congressional Record. 47:381-90 (unbound). April 20, 1911.

Constitutions of Arizona and New Mexico.

George E. Chamberlain.

I maintain, first, that no argument can be found, either in reason or by analogy, that makes the Arizona constitution providing for the initiative, referendum, and recall obnoxious to any provision of the Constitution of the United States; second, that these provisions are but the reservation of powers in a written constitution which have been exercised in this country from the earliest colonial times, and the exercise of them has been recognized as constitutional by the legislative, judicial, and executive branches of the Government, both State and National.

In ascertaining what the framers of the Constitution meant when they declared that Congress should guarantee to every State a republican form of government, resort must be had to the conditions which surrounded the administration of the

governments of the several Colonies as well as to contemporaneous and subsequent discussion and judicial decision.

There was nothing which preceded the Constitutional Convention that could have caused the framers of what Gladstone declared "the most wonderful work ever struck off at a given time by the brain and purpose of man" to fear to intrust the people of the States that might thereafter be admitted to the Union with the power of governing themselves, of enacting their own laws, whether directly or by representatives or by the union of both. Both of these systems, separately and in combination, were in vogue in the Colonies at the adoption of the Constitution, and had been since the earliest settlement of New England. The Revolutionary War had been fought to a successful conclusion by the participation of Colonies some of which were practically governed by the people without more than the form of representative governments. If in framing the constitutional provision under discussion its framers feared to intrust the people with all power, why did they not go further and enjoin, as a condition of admission to the Union, a modification of the Constitution and laws of the Colonies to the idea that the people could not be trusted?

A fair consideration of contemporary literature and discussion will lead to the inevitable conclusion that the fear that animated the framers of the Constitution was not the fear of the mob spirit which we hear so much about in these days, it was not the fear that the people were incapable of self-government or that they could not be trusted to legislate for themselves, but it was a fear that attempts might later be made to establish forms of government with aristocratic or monarchical tendencies, and to protect them from domestic insurrection or foreign invasion.

The Declaration of Independence itself contains the severest possible arraignment of the despotism of a monarchy, and expresses absolute confidence in the people. There is no suggestion in that remarkable document that the people themselves were incapable of self-government; on the contrary, one of its most frequently quoted provisions is that wherein it is stated as a self-evident truth—

that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these things it is the right of the people to alter or abolish it and to institute new government, laying its foundations on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness.

In this connection it is proper to call attention to some of the constitutions and bills of rights of the Colonies prior to the formation of the Federal Constitution.

The North Carolina bill of rights of 1776 declares:

1. That all political power is vested in and derived from the people only.

The Virginia bill of rights of 1776 declares:

Section 1. That all men are by nature equal, free, and independent, and have certain inherent rights, of which, when they enter into a state of society, they can not by any compact deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property and pursuing and obtaining happiness and safety.

Section 2. That all power is vested in, and consequently derived from, the people.

The Maryland bill of rights of 1776 says:

1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

The Pennsylvania bill of rights of 1776 declares:

III. That the people of this State have sole, exclusive, and inherent right of governing and regulating the internal police of the same.

The New York bill of rights of 1777 declares:

1. This convention, therefore, in the name and by the authority of the good people of this State, doth ordain, determine, and declare that no authority shall, on any pretense whatever, be exercised over the people or members of this State but such as shall be derived from and granted by them.

It will be seen from these excerpts from the bills of rights and constitutions of the several Colonies, each and all of which must have been in the minds of the framers of the Federal Constitution, that, far from entertaining any fear of the people, there was an expression of absolute confidence in them in each of the Colonies as the source from which all power had its origin. Many of the Colonies had been governed as pure democracies, the people legislating directly at town meetings

held for that purpose and electing as well as instructing those who were to assist in administrating the laws of their own making.

The representative idea was one of gradual evolution. There was no sudden change from a pure democracy to a representative form of government. There has never been a time when the governments, either of the Colonies or the States, were entirely representative. On the contrary, with the gradual trend toward the representative system the direct system remained intact for many years after the adoption of the Constitution, and it has never yet been entirely abolished in any of the States. Always the tendency was, even in the most typically representative forms of government, to make the representatives or agents of the people directly responsive to the popular will. I shall show later that so long as these representatives or agents of the people were acting in truth and in fact as their representatives, the people were satisfied with the transference of a part of the power which they had formerly exercised under constitutional limitations and restrictions to representatives, but when these agents began to reach a point where they ignored the popular will, were no longer responsive thereto, but responded rather to the dictation of the political machine and the corrupt party boss, the pendulum began to swing in the opposite direction, and checks began to be devised against legislative and representative usurpation. What was once, in part at least, a representative form of government, has become a misrepresentative form of government, and in a determination to correct this the initiative, the referendum, and the recall had their origin.

The coordinate branches of the National Government—the executive, legislative, and judicial—as well as those of the State governments, have recognized that the government proposed to be established under the Arizona constitution is republican in form. The Arizona constitution is almost in *ipsis verbis* of the constitutions of Oregon, Montana, South Dakota, and Oklahoma, in each of which the popular initiative and the optional referendum, and in some of them the recall, make more effective the voice of the people and operate as checks and

balances against legislative malfeasance, corruption, and misrule.

Oklahoma was admitted to the Union with these provisions in the constitution, and Congress recognized that it was republican in form by admitting it to the Union, and the President by proclamation, carrying out the resolution of Congress in that behalf, declared that the constitution of Oklahoma was republican in form.

And again, after the adoption by the people of Oregon, Montana and South Dakota of amendments to their constitutions putting into effect the provisions which it is claimed are obnoxious to the Federal Constitution, the Senators and the Representatives from these States, as well as from Oklahoma, have been admitted to their seats without question; and this constituted a recognition by Congress that these States had republican forms of government.

I have shown that legislation by direct vote of the people has been expressly authorized by and enacted in the constitutions of a number of the States and the power recognized by Congress. I shall now undertake to show that the power reserved under the referendum clause of the Arizona constitution has been reserved by the constitution of nearly every State in the Union, has been recognized by Congress as a valid reservation of power, and has been exercised as well by Congress itself. It has been exercised by the States under constitutional authority in matters affecting localities in the States, as well as in matters affecting the whole State.

And, first, as to those affecting the States at large. One of the earliest constitutional provisions for a referendum is to be found in Article I, section 23, of the constitution of Georgia (1798), which is as follows:

> And this convention doth further declare and assert that all the territory within the present temporary line, and within the limits aforesaid, is now, of right, the property of the free citizens of the State and held by them in sovereignty inalienable, but by their consent.

At the time of the adoption of the New York constitution in 1846 the question of extending the right of suffrage to the negroes was referred to the people, and a like provision was

made in the Michigan constitution in 1850. The constitutions of Wisconsin (1848), Kansas (1858), Colorado (1876), South Dakota (1889), Washington (1889), and North Dakota (1895) contain provisions for a referendum of questions affecting suffrage leaving it absolutely and entirely to a vote of the majority of the people as to whether these provisions should be operative or not. The constitution of Rhode Island (1842) provides that the general assembly shall have no power without the express consent of the people to incur debts in excess of $50,000, nor shall they in any case without such consent pledge the faith of the State for the payment of the obligations of others.

The constitutions of Michigan (1843), New Jersey (1844), New York and Iowa (1846), Illinois (1848), California (1849), Kentucky (1850), Kansas (1859), Nebraska (1866), Missouri (1875), Colorado (1876), Louisiana (1879), Idaho, Montana, Washington, and Wyoming (1889), and South Carolina (1895) have adopted measures providing for a referendum involving the creation of debts on behalf of these States or the pledging of the credit thereof. The State of Texas, in its constitution of 1845, provided for the permanent establishment of the seat of government by vote of the people at an election the time, place, and conduct of which was fixed by the constitution. Numerous States followed the example set by Texas and adopted substantially the same provision with reference to the location of the State capital.

Following the same course, the State of Iowa, in its constitution of 1846, provided that no act of the general assembly authorizing or creating corporations or associations with banking powers should take effect or be in force until submitted to the people, at a general or special election and by a majority of them approved. Illinois, Wisconsin, Michigan, Ohio, Kansas, and Missouri followed with constitutional provisions of substantially the same character.

Innumerable instances might be cited showing that legislation with reference to the sale of school lands, that relating to State aid to railways, to taxation, the location of State universities, the extension of suffrage, and appropriations for

State purposes was required by constitutional provision to be submitted to the voters of the State for approval or rejection.

The second class of constitutional provisions providing for a referendum are those which affect local governments and within this class come a great variety of subjects. The first provision of this kind is to be found in the constitution of Tennessee of 1834, where the people reserved to themselves the right to cooperate in acts of government involving the change of county lines. Section 4 of article X provided that—

> No part of the country shall be taken to form a new county or a part thereof without the consent of a majority of the qualified voters in such part taken off.

Practically the same provision has been embodied in later constitutions of many of the States, some requiring a majority of the electors and some two-thirds as a condition to changing county lines.

Section 5 of Article VIII of the Maryland constitution of 1864 provided that—

> The general assembly shall levy at each regular session after the adoption of the constitution an annual tax of not less than 10 cents on each $100 of taxable property throughout the State for the purpose of free schools: *Provided*, That the general assembly shall not levy any additional school tax upon particular counties unless such county express by popular vote its desire for such tax.

This provision is not only a provision of initiative legislation on the one part, but contains in the very section a provision for the referendum of the act to the people of the county.

Other States followed with constitutional provisions requiring a referendum on laws increasing the rate of taxation for school purposes. Amongst these were Missouri (1875), Texas (1876), and Florida (1885). Those providing for a referendum to authorize an increased tax rate in counties were Texas (1868), Illinois (1870), Nebraska (1875), West Virginia (1872), Missouri (1875), and Louisiana (1879).

Provisions are also to be found in the constitutions of many of the States subjecting to a referendum local matters with regard to creating municipal indebtedness and the issuance of bonds, the acquiring of waterworks and plans for light, changing lines of judicial districts, the formation of new courts, and other questions of a purely local character.

Representative Government and the Common Law.

Emmet O'Neal.

It is established by the experience of every section that until abuses become intolerable the demands of personal affairs are too absorbing and the burdens of that public duty which citizenship imposes upon the individual are too heavy or exacting to permit more than a mere perfunctory interest in public matters. In my judgment, therefore, the efficient cause for the larger part of our political ills and of the misgovernment that we may endure, or the treason that may develop in legislative bodies, lies in the indifference of the people themselves and not in their failure to directly participate in the making of the laws.

Whenever the people are aroused and demand a just relief, legislators are quick to hear and ready to obey. It is not through direct legislation but in an aroused public conscience, the growth of a stronger sense of civic duty, a more diligent and watchful interest by the people over their own affairs, that we must rest our ultimate hope of permanent political reform. The forces of reform are too often short-lived, while the evil influences they may overcome generally arise from defeat with renewed vigor.

An antidote to this indifference of the people and a safeguard almost sufficient in itself to overcome the existence of a venal or corrupt legislature can be found in the high sense of official obligation and the independent exercise by the great majority of American executives of the legislative functions vested in them by the constitutions of the states.

It is claimed by the advocates of the initiative that that system is necessary because representatives in the Legislature can not be elected who are possessed of that capacity and fidelity to duty which fits them to properly perform the high functions of their great office. Such a position, it occurs to me, not only plainly evidences a distrust of the people, but is based on the assumption that the people are incapable of self-government. If it be true that the people are so sunk in abject subservience to political bossses, so tied to the wheels of the political machines,

that unworthy legislators can alone be elected, where would be the limitation on the power of those bosses or of that political machine to force through the same electorate the passage of any laws that their selfish interest might dictate when every safeguard which now surrounds their enactment is removed?

As an American citizen, I am indeed proud to say that it is not true that the men who have represented the sovereignity of the states, who make the laws which protect us in our lives and property, who levy and disburse our taxes and frame our civil and criminal laws, are unworthy and corrupt. There may be isolated instances where members of the legislatures have betrayed the interests of the people, just as there have been isolated instances of wholesale corruption among the people in some localities, but the fault lies not in the system but in the frailties of human nature. The legislators of the various states of the Union have been, as a general rule, the picked and chosen men of the communities from which they have come, and have been honest, wise and patriotic. From whose hands have come, during the century or more of our existence, those laws under which we have grown and prospered and held a higher measure of freedom than has ever come to the lot of any people? The statute books of the American states are filled with wise and beneficient laws, through the operation of which they have grown into great and powerful commonwealths. It was a great statesman, from whose lips words of idle or extravagant praise never fell, who said:

"The statute books of these commonwealths can be read by the patriotic without a blush. I am not afraid to compare them with the two hundred parliaments through which for eight hundred years the freedom of England has broadened down from precedent to precedent."

Members of the legislatures of the different states are the agents and direct representatives of the people, and if it be true that as a whole they are incompetent, unworthy and corrupt it would follow necessarily that the masses of the people from whom they spring and from whom they are selected were also either corrupt or criminally indifferent to their interests or liberties. They possess the same characteristics as the people from whom they have come, and if, after repeated trials and selec-

tions, the community cannot secure an intelligent and honest man to represent it, I would not like to live under laws initiated or adopted by the sovereignty of that people. [Applause.]

North American Review. 198: 145-60. August, 1913.

Direct Rule of the People. George Kennan.

Supporters of the initiative, the referendum, and the recall say that these measures will take the government out of the hands of corrupt or selfish bosses, and put it in the hands of the people where it properly belongs. But will this be the result? It seems to be more than doubtful. The bosses as well as the people can initiate bills and make recalls, and they are far more shrewd and resourceful than the people are in the art of political manipulation. The new machinery, moreover, affords as many opportunities for fraud as the old did. What is to prevent the bosses or the interests from initiating bills, hiring corrupt canvassers, and getting thousands of fictitious or fraudulent signatures to their petitions? In Oregon they have already done this. In a judicial investigation of the "spite" referendum on the appropriation for the State university, ten thousand out of thirteen thousand signatures were found to be fictitious or fraudulent.

In the city of Seattle, last fall, there was an anti-vice crusade, headed by the mayor and aided by a body of special police known as the PURITY SQUAD. The vicious interests of the city very naturally, did not like it, and began a popular proceeding to remove the mayor by means of the recall. They offered a recall petition bearing the signatures of twenty-six thousand six hundred alleged citizens, but, upon investigation, all but about eight thousand of the signatures were found to be fraudulent. Meanwhile a force of seventy-five clerks had spent two weeks in the work of verification.

Then, again, what is to prevent the bosses, or the interests, from framing their bills in such a way as to deceive and mislead the voter? This, also, they have done in Oregon. Four years ago, a bill was initiated there for the purpose of ultimately

abolishing all taxes except the tax on land. The people defeated it by a vote of two to one. Two years later the same bill was reintroduced, but in a form which made its object seem to be the abolition of the unpopular poll-tax. The very same people who had defeated the bill in its original form adopted it in its amended form, simply because, in the second election, they were deceived as to its real object. This may happen with any piece of legislation. There seems to be no limit to the devices by which the bosses and the interests control the new machinery for their own purposes. The authorization of the recent constitutional convention in Ohio was apparently secured by means of a "joker" in the printing of ballots —the words "CONSTITUTIONAL CONVENTION; YES," in small type, being concealed in the middle of a huge blanket ballot, where the voter would not notice them unless his attention were particularly called to them. This joker is supposed to have been contrived by the labor interests, which afterward controlled the convention.

The evils of direct popular rule in Oregon, where it has been on trial for ten years, are summed up by one of its friends as follows:

1.—The cost of direct legislation has been high in proportion to the results achieved.

2.—The Oregon constitution has been seriously weakened, its safeguards entirely destroyed and its very existence threatened, by a minority of the voters of the State.

3.—The people have passed laws against their interests and their convictions. They have been fooled by men who claimed to trust the people, but who, afraid to submit measures honestly, so disguised them that they succeeded in passing.

4.—The machinery of direct legislation has fallen into the hands of dishonest men, who for money and spite have abused the privilege of direct legislation, and who, in the name of the people, have misrepresented our citizenship and brought disgrace upon our State.

What we need in the United States is not new political machinery, but a nation of good citizens, who will devote them-

selves faithfully and conscientiously, to the duty of choosing good representatives. If the newspaper and magazine writers who, in the past five years, have devoted so much time and space to exposure of the evil deeds of bosses and corporations, had given an equal amount of time and space to the shortcomings of the voters, we might, possibly, have a better government than that which we now see.